

LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 550

79

**2,872.88 ACRES OF LAND, ETC., ET AL.,
PETITIONERS,**

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**PETITION FOR CERTIORARI FILED FEBRUARY 21, 1963.
CERTIORARI GRANTED APRIL 22, 1963**

**INDEX TO CONTENTS
TRANSCRIPT OF RECORD**

From the Record of Civil No. 789

Complaint in Condemnation	1-17
Order Appointing Commissioners	18-20
Instructions to Commissioners	21-26
Amendment to Orders Appointing Commissioners	27-28
Order on Pre-Trial Hearing Before Commissioners	29-31
Report of Commissioners on H-805 Series	32-40
Report of Commissioners on M-1306 and M-1306-E	41-49
Objections to Report of Commissioners on H-805 Series	50-52
Objections to Reports of Commissioners on M-1306 and M-1306-E	52-54
Order of Court Adopting Report of Commissioners on H-805 Series	55-56
Order of Court Adopting Report of Commissioners on M-1306 and M-1306-E	56-57
Judgment on Order Adopting Report of Commis- sioners on H-805 Series	57-59
Judgment on Order Adopting Report of Commis- sioners on M-1306 and M-1306-E	60-62
Notice of Appeal on H-805 Series	62-63
Notice of Appeal on M-1306 and M-1306-E	64-65
Order Transmitting Original Papers and Exhibits on H-805 Series	65-67
Order Transmitting Original Papers and Exhibits on M-1306 and M-1306-E	67-69

From the Record of Civil No. 792

Complaint in Condemnation	69-89
Report of Commissioners on B-201 Series	89-99
Objections to Report of Commissioners on B-201 Series	100-101
Order of Court Adopting Report of Commissioners on B-201 Series	102
Judgment on Order Adopting Report on B-201 Series	103-105
Notice of Appeal on B-201 Series	105-106
Designation of Record for Printing and Statement of Points on Appeal	106-109
Order Transmitting Original Papers and Exhibits on B-201 Series	110-111

	Original	Print
Proceedings in the United States Court of Appeals for the Fifth Circuit	112	112
Minute entry of argument and submission (omitted in printing)	113	112
Opinion, Tuttle, Ch. J.	114	112
Judgments	124	119
Order denying petition for rehearing	135	121
Clerk's certificate (omitted in printing)	136	122
Order allowing certiorari	137	122

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA,
COLUMBUS DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,

v.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER ET AL. AND
UNKNOWN OWNERS,
Defendants.

Civil No. 789

COMPLAINT IN CONDEMNATION.

(Filed May 15, 1959. Walter F. Doyle, Deputy Clerk,
United States District Court.)

1.

This is an action of a civil nature brought by the United States of America at the request of the Secretary of the Army of the United States for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2.

The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved April

24, 1888 (25 Stat. 94, 33 U.S.C. 591), which act authorizes the acquisition of land for river and harbor purposes; the Act of Congress approved July 24, 1946 (Public Law 525, 79th Congress), which act authorizes the construction of the Fort Gaines Lock and Dam, which said lock and dam, by Public Law 85-363, approved March 28, 1958, has been redesignated the Walter F. George Lock and Dam; and the Act of Congress approved September 2, 1958 (Public Law 85-863), which act appropriated funds for such purposes.

The public uses for which said land is taken are as follows: The said land is necessary adequately to provide for the construction, repair and preservation of certain public works of rivers, harbors and waterways, and for other uses incident thereto. The said land has been selected for acquisition by the United States for use in connection with the establishment of the Walter F. George Lock and Dam, Georgia and Alabama, and for such other uses as may be authorized by Congress or by Executive Order.

The interests in the property to be acquired are as follows:

- (a) The fee simple title to Tracts E-524, H-805, H-806, M-1301, M-1306, M-1321, M-1324, M-1330, M-1333, M-1334, and M-1348, together with all right, title or interest in and to the banks, beds and waters of any streams opposite to or fronting upon said land, subject, however, to existing easements for public roads and highways, pub-

lic utilities, railroads and pipelines, and also, with respect to Tract E-524, subject to the burial easement or rights of the next of kin in the bodies interred in an unnamed cemetery located thereon, and constituting a part thereof, designated as Tract E-524-C, a description of which is set out in Schedule "A" hereof.

(b) The perpetual right, power, privilege and easement in, upon, over and across Tracts H-805-E-1, H-805-E-2, H-805-E-3, H-805-E-4, H-806-E, M-1301-E-1, M-1301-E-2 and M-1306-E, for the purposes set forth below, together with all right, title, and interest in and to the structures and improvements now situate on the land, and all right, title, and interest in and to the timber situate below elevation 192 feet above Mean Sea Level.

(1) Permanently to overflow, flood, and submerge the land lying below elevation 192 feet above Mean Sea Level and to maintain mosquito control in connection with the operation and maintenance of the Walter F. George Lock and Dam project as authorized by the Act of Congress approved July 24, 1946 (Public Law 525, 79th Congress), together with the continuing right to clear and remove any brush, debris, and natural obstructions which, in the opinion of the representative of the United States in charge, may be detrimental to the operation of the project.

(2) Occasionally to overflow, flood, and submerge the land lying above elevation 192 feet above Mean Sea Level and to maintain mosquito control in connection with the operation and maintenance of said project.

(3) Provided that no structure for human habitation shall be constructed or maintained on said land, and pro-

4

vided further that no other structures shall be constructed or maintained on said land except as may be approved in writing by said representative of the United States in charge of the project.

(4) As to the described land in which easements are taken, all rights and privileges which may be used and enjoyed without interfering with or abridging the rights and easements hereby taken are specifically reserved to the respective owners, their heirs and assigns: the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

5.

The property so to be taken is described in Schedule A hereto attached. The property which is the subject matter of this proceeding is located in Clay and Quitman Counties, Georgia.

6.

The persons having or claiming an interest in the property, including taxing authorities, whose names are now known are:

AS TO ALL TRACTS

The Governor of Georgia	Atlanta, Georgia
The Secretary of State	Atlanta, Georgia
The Attorney General of Georgia	Atlanta, Georgia
State Highway Board	Atlanta, Georgia
County Commissioners of Clay County	Ft. Gaines, Georgia

County Commissioners of Quitman
County

Georgetown, Georgia

The Ordinary of Clay County, Ga.,
or the Clerk of the Superior
Court of said County, if the
Ordinary be disqualified, pur-
suant to Section 36-310 of the
Code of Georgia of 1933

Ft. Gaines, Georgia

The Ordinary of Quitman County,
Ga., or the Clerk of the Superior
Court of said County, if the
Ordinary be disqualified, pur-
suant to Section 36-310 of the
Code of Georgia of 1933

Georgetown, Georgia

Board of County Tax Assessors,
Clay County, Ga.

Ft. Gaines, Georgia

Board of County Tax Assessors,
Quitman County, Ga.

Georgetown, Georgia

Tax Commissioner, Clay County,
Ga.

Ft. Gaines, Georgia

Tax Commissioner, Quitman
County, Ga.

Georgetown, Georgia

TRACTS H-805

H-805-E-1

H-805-E-2

H-805-E-3

H-805-E-4

Hoke S. Lindsay

Route 2
Georgetown, Georgia
Abbeville, Alabama

Bank of Abbeville

TRACTS M-1306

M-1306-E

A. J. Watson

Route 2
Georgetown, Georgia

6.

Dawson Productive Credit Association

Alto Williams

C. J. Hardiman

Mrs. Willie Jackson

Georgia Power Company

Dawson, Georgia

Route 2

Georgetown, Georgia

Route 2

Georgetown, Georgia

Route 2

Georgetown, Georgia

Atlanta, Georgia

All the parties in possession of the lands herein sought to be condemned whose identities and addresses are unknown.

7.

In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken whose names are not known to the plaintiff and such persons are made parties to this action under the designation "Unknown Owners."

8.

An option for purchase of land determining the amount of just compensation payable by plaintiff has been entered into with Mrs. Lillie B. McDaniel Hinson and William Lucas Hinson, son of Mrs. Hinson, in connection with Tract No. M-1334 herein.

Wherefore, the plaintiff demands judgment that the property be condemned and that just compensation for

the taking be ascertained and awarded and for such other relief as may be lawful and proper.

Frank O. Evaris,
United States Attorney,

By /s/ Truett Smith,
Truett Smith,
Assistant United States Attorney,

Address:

P. O. Box 118,
Macon, Georgia.

DEMAND FOR JURY.

Trial by jury of the issue of just compensation is demanded by plaintiff this 15th day of May, 1959.

/s/ Truett Smith,
Truett Smith,

Assistant United States
Attorney.

SCHEDULE "A"

DESCRIPTION:

TRACT H-805

All that tract or parcel of land lying and being in Land Lots 388, 389, 411, and 412 and Fractional Land Lots 413, 414, and 421, Seventh Land District, Clay County, Georgia, and being more particularly described as follows:

Beginning at a point which is on the South line of said Land Lot 389 a distance of 1150 feet West of the Southeast corner of said Land Lot 389;

thence West along the South lines of said Land Lots 389, 411 and 414 a distance of 5850 feet, more or less, to the left bank of the Chattahoochee River;

thence North and Northwesterly upstream along the meanders of said left bank 7500 feet, more or less, to the North line of said Land Lot 421 which is the South boundary of Quitman County;

thence East along the North lines of Land Lots 421, 413, and 412 a distance of 6450 feet, more or less, to a point 1900 feet West of the Northeast corner of said Land Lot 412;

thence S 11° E 725 feet, more or less, to a point which is 700 feet South of the North line and 1750 feet West of the East line of said Land Lot 412;

thence S 30° E 1025 feet, more or less, to a point which is 1250 feet West of the East line and 1600 feet South of the North line of said Land Lot 412;

thence S 45° E 650 feet, more or less, to a point which is 750 feet West of the East line and 2050 feet South of the North line of said Land Lot 412;

thence East along a line parallel to the North line of said Land Lot 412 a distance of 500 feet;

thence N 60° E 500 feet, more or less, to a point which is 200 feet East of the West line and 1800 feet South of the North line of said Land Lot 388;

thence S 30° E 300 feet, more or less, to a point which is 350 feet East of the West line and 2050 feet South of the North line of said Land Lot 388;

thence N 60° E 450 feet, more or less, to a point which is 750 feet East of the West line and 1850 feet South of the North line of said Land Lot 388;

thence South along a line parallel to the West line of said Land Lot 388 a distance of 350 feet;

thence East along a line parallel to the North line of said Land Lot 388 a distance of 1750 feet, more or less, to a point 700 feet West of the East line of said Land Lot 388;

thence S 40° W 600 feet, more or less, to a point which is 250 feet North of the South line and 1125 feet West of the East line of said Land Lot 388;

thence West along a line parallel to the South line of said Land Lot 388 a distance of 1200 feet;

thence South along a line parallel to the East line of said Land Lots 388 and 389 a distance of 1775 feet;

thence S 45° E 1350 feet, more or less, to a point which is 1350 feet West of the East line and 175 feet North of the South line of said Land Lot 389;

thence East along a line parallel to the South line of said Land Lot 389 a distance of 200 feet;

thence South along a line parallel to the East line of said Land Lot 389 a distance of 175 feet, more or less, to the point of beginning.

AND all that tract or parcel of land lying and being in Land Lots 337 and 367 and Fractional Land Lot 368, Eighth Land District, Quitman County, Georgia, being more particularly described as follows: ○

Beginning at a point which is on the South line of said Land Lot 337 a distance of 2150 feet West of the Southeast corner of said Land Lot 337;

thence West along the South line of said Land Lots 337, 367, and 368 a distance of 6450 feet, more or less, to the left bank of the Chattahoochee River;

thence Northwesterly and Northeasterly along said left bank of the Chattahoochee River 2100 feet, more or less, to a corner of a tract of land now or formerly owned by Elizabeth G. Logue;

thence East along the boundary of said Logue tract 5400 feet, more or less, to the East line of said Land Lot 367;

thence South along the East line of said Land Lot 367 a distance of 450 feet, more or less, to a corner of a tract of land now or formerly owned by David L. Mason;

thence N 86° E 100 feet, more or less, to a point 100 feet East of the West line of said Land Lot 337;

thence S 10° E 525 feet, more or less, to a point which is 700 feet North of the South line and 200 feet East of the West line of said Land Lot 337;

thence S 36° E 1000 feet, more or less, to the point of beginning.

The land described hereinabove contains a net total of 963.00 acres, more or less, and designated as Tract H-805 of the Walter F. George Lock and Dam.

TRACT H-805-E-1

All that portion of Land Lot 388, Seventh Land District, Clay County, Georgia, that lies below the contour at

Elevation 197.0 feet above Mean Sea Level and within a portion of said land lot described as follows:

Beginning at a point which is 700 feet West of the East line and 2200 feet South of the North line of said Land Lot 388;

thence West along a line parallel to the North line of said land lot a distance of 200 feet;

thence North along a line parallel to the East line of said land lot a distance of 500 feet;

thence East along a line parallel to the South line of said land lot a distance of 700 feet;

thence South along a line parallel to the East line of said land lot a distance of 1000 feet, more or less, to a point 250 feet North of the South line of said land lot;

thence West along a line parallel to the South line of said land lot a distance of 925 feet;

thence N 30° E 600 feet, more or less, to the point of beginning.

Containing 2.10 acres, more or less, and designated as Tract H-805-E-1 of the Walter F. George Lock and Dam.

TRACT H-805-E-2

All that portion of Land Lot 388, Seventh Land District, Clay County, Georgia, that lies below the Contour at Elevation 197.0 feet above Mean Sea Level and within a portion of said land lot described as follows:

Beginning at a point which is 200 feet East of the West line and 1800 feet South of the North line of said Land Lot 388;

thence N 60° E 1050 feet, more or less, to a point which is 1100 feet East of the West line and 1300 feet South of the North line of said land lot;

thence South along a line parallel to the West line of said land lot a distance of 900 feet;

thence West along a line parallel to the North line of said land lot a distance of 350 feet;

thence North along a line parallel to the West line of said land lot a distance of 350 feet;

thence S 60° W 450 feet, more or less, to a point which is 350 feet East of the West line and 2050 feet South of the North line of said land lot;

thence N 30° W 300 feet, more or less, to the point of beginning.

Containing 3.40 acres, more or less, and designated as Tract H-805-E-2 of the Walter F. George Lock and Dam.

TRACT H-805-E-3

All that portion of Land Lot 389, Seventh Land District, Clay County, Georgia, that lies below the contour at Elevation 197.0 feet above Mean Sea Level and within a portion of said land lot described as follows:

Beginning at a point which is 1525 feet South of the North line and 2325 feet West of the East line of said Land Lot 389;

thence North along a line parallel to the East line of said land lot a distance of 900 feet;

thence East along a line parallel to the North line of said land lot a distance of 900 feet;

thence South along a line parallel to the East line of said land lot a distance of 900 feet;

thence West along a line parallel to the North line of said land lot a distance of 900 feet to the point of beginning.

Containing 3.40 acres, more or less, and designated as Tract H-805-E-3 of the Walter F. George Lock and Dam.

TRACT H-805-E-4

All that portion of Land Lot 389, Seventh Land District, Clay County, Georgia, that lies below the contour at Elevation 197.0 feet above Mean Sea Level and within a portion of said land lot described as follows:

Beginning at a point which is 1525 feet South of the North line and 2325 feet West of the East line of said Land Lot 389;

thence East along a line parallel to the North line of said land lot a distance of 975 feet;

thence South along a line parallel to the East line of said land lot a distance of 1000 feet, more or less, to a point 175 feet North of the South line of said land lot;

thence N 45° W 1350 feet, more or less, to the point of beginning.

Containing 1.80 acres, more or less, and designated as Tract H-805-E-4 of the Walter F. George Lock and Dam.

Tracts H-805, H-805-E-1, H-805-E-2, H-805-E-3, and H-805-E-4 contain in the aggregate 973.70 acres, more or less, and being a part of the same land described in a deed from T. W. Mobley to Hoke S. Lindsey, dated 9 December

1944 and recorded in Deed Book P, page 109, of the records in the office of the Clerk of the Superior Court of Clay County, Georgia.

SCHEDULE "A"

DESCRIPTION:

TRACT M-1306

All that tract or parcel of land lying and being in Land Lots 325, 326, 347, 348 and 349, Eighth Land District, Quitman County, Georgia, and being more particularly described as follows:

Beginning at the Southwest corner of Land Lot 348; thence North along the West line of said Land Lot 348 a distance of 950 feet, more or less, to the center of Tolanee Creek;

thence Easterly upstream along the meanders of the center line of said creek 1600 feet, more or less, to a corner of a tract of land now or formerly owned by J. R. Ogletree;

thence N 05° E along the boundary of said Ogletree tract 2700 feet, more or less, to a corner of a tract of land now or formerly owned by J. T. Hart, et al;

thence S 88° E along the boundary of said Hart tract 625 feet, more or less, to the boundary of a tract of land now or formerly owned by Central of Georgia Railway Company;

thence S 10° W along the boundary of said Railway tract 75 feet, more or less, to a corner of said Railway tract;

thence S 80° E along the boundary of said Railway tract 475 feet, more or less, to a corner of a tract of land now or formerly owned by J. T. Hart, et al;

thence S 03° W along the boundary of said Hart tract 1925 feet, more or less, to the center of said Tobanee Creek;

thence Easterly upstream along the meanders of the center line of said creek 2450 feet, more or less, to the boundary of a tract of land now or formerly owned by said Central of Georgia Company;

thence S 10° E along the boundary of said Railway tract 15 feet, more or less, to a corner of said Railway tract;

thence N 80° E along the boundary of said Railway tract 15 feet, more or less, to a corner of said Railway tract;

thence Southerly along the boundary of said Railway tract 1425 feet, more or less, to the South line of said Land Lot 325;

thence West along the South line of said Land Lot 325, a distance of 200 feet, more or less, to a point 1750 feet West of the Southeast corner of said Land Lot 325;

thence N 45° W 400 feet, more or less, to a point which is 300 feet North of the South line and 2000 feet West of the East line of said Land Lot 325;

thence West along a line parallel to the South line of said Land Lot 325 a distance of 300 feet;

thence South along a line parallel to the East line of said Land Lots 325 and 326 a distance of 1250 feet;

thence S 45° W 650 feet, more or less, to a point which is 2750 feet West of the East line and 1550 feet North of the South line of said Land Lot 326;

thence South along a line parallel to the East line of said Land Lot 326 a distance of 525 feet, more or less, to the boundary of a tract of land now or formerly owned by Richard B. Gary;

thence West along the boundary of said Gary tract 3500 feet, more or less, to the West line of said Land Lot 347;

thence North along the West line of said Land Lot 347 a distance of 1975 feet, more or less, to the point of beginning.

Containing 330.00 acres, more or less, and designated as Tract M-1306 of the Walter F. George Lock and Dam.

TRACT M-1306-E

All that portion of Land Lots 325 and 326, Eighth Land District, Quitman County, Georgia, that lies below the contour at Elevation 198.3 feet above Mean Sea Level and within a portion of said land lots described as follows:

Beginning at a point which is 2300 feet West of the East line and 950 feet South of the North line of said Land Lot 326;

thence North along a line parallel to the East lines of said Land Lots 326 and 325 a distance of 1250 feet;

thence East along a line parallel to the South line of said Land Lot 325 a distance of 300 feet;

thence S 45° E 400 feet, more or less, to a point which is on the South line of said Land Lot 325 a distance of 1750 feet West of the Southeast corner of said Land Lot 325;

thence East along the South line of said Land Lot 325 a distance of 200 feet, more or less, to the boundary of a tract of land now or formerly owned by Central of Georgia Railway Company;

thence Southeasterly along the boundary of said Railway tract 1000 feet, more or less, to a point 950 feet South of the North line of said Land Lot 326;

thence West along a line parallel to the North line of said Land Lot 326 a distance of 1200 feet, more or less, to the point of beginning.

Containing 7.58 acres, more or less, and designated as Tract M-1306-E of the Walter F. George Lock and Dam.

Tracts M-1306 and M-1306-E contain in the aggregate 337.58 acres, more or less, and being a part of the same land described in a deed to A. J. Watson from J. H. Gordon, dated 31 January 1949 and recorded in Deed Book 30, page 64 and substantially the same land described in a deed to Annis J. Watson and J. H. Gordon, dated 31 December 1937 and recorded in Deed Book 23, page 579 of the records in the office of the Clerk of the Superior Court of Quitman County, Georgia.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS AND ALBANY DIVISIONS**

UNITED STATES OF AMERICA,

v.

**2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS**

UNITED STATES OF AMERICA,

v.

**1,361.09 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA,
AND CAROLYN GAVIN GIBSON,
ET AL.; AND UNKNOWN OWN-
ERS**

**Civil Action
No. 789**

**Civil Action
No. 792**

ORDER APPOINTING COMMISSIONERS.

(Filed December 22, 1959. John P. Cowart, Clerk
United States District Court.)

After hearing from counsel and after considering the facts involved, and it appearing to the court that in these proceedings plaintiff, The United States of America, is condemning various tracts of land and various easements in connection with the Walter F. George Lock and Dam Project, and in connection with the Columbia Lock and Dam Project (all of said civil actions being in connection with the Walter F. George Lock and Dam Project, except Civil Action No. 608, which relates to the Columbia Lock and Dam Project, and it appearing that in all probability additional civil actions will be instituted in connection with

the last named project), and the court being of the opinion and hereby determining that because of the character, location and quantity of the property being condemned, and in the interest of justice, the issue of compensation should be determined by a Commission, one advantage of such determination being the facility with which Commissioners may inspect the property, and another being uniformity of award as to the various tracts involved, and another being the expedition with which awards can be finally determined as compared to jury trial, it is, therefore,

ORDERED that the issue of just compensation in these proceedings be and it is hereby referred to three Commissioners, as follows: Mallory C. Atkinson, of Macon, Georgia, who shall act as Chairman of the Commission, J. P. Champion, of Albany, Georgia, and Hines Preston, of Columbus, Georgia.

The above named Commissioners shall have the powers of a master, and shall be governed by the provisions of Rule 53, Federal Rules of Civil Procedure, insofar as they are applicable.

Lest the statement recently repeated in footnote 5 in the case of *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957), that "there is no more effective way of putting a case to sleep for an indefinite period than to permit it to go to a reference with a busy lawyer as referee" be proven true, it is hereby further

ORDERED in accordance with Rule 53(d), Federal Rules of Civil Procedure, that the Commissioners shall forthwith set a time and place for the first meeting of the

parties and their attorneys to be held within 30 days after the date of this order, and it is hereby further

ORDERED that the Chairman of this Commission make a progress report to this court, in writing, immediately after its first meeting, and monthly thereafter pending the filing of the Commission's final report.

This 22nd day of December, 1959.

/s/ W. A. Bootle;

United States District Judge.

This is to certify that I have this day mailed a copy of the within order and a copy of Instructions To Commissioners to Mr. Mallory C. Atkinson, Attorney at law, First National Bank Bldg., Macon, Ga., and to Mr. J. P. Champion, P. O. Box 165, Albany, Ga.; Mr. Hines Preston, 1109 Lockwood Ave., Columbus and Mr. Frank O. Evans, U. S. Attorney, Macon, Ga. This Dec. 22, 1959.

/s/ John P. Cowart,

Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS AND ALBANY DIVISIONS

UNITED STATES OF AMERICA,

v.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS

Civil Action
No. 789

UNITED STATES OF AMERICA,

v.

1,361.09 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA,
AND CAROLYN GAVIN GIBSON,
ET AL., AND UNKNOWN OWN-
ERS

Civil Action
No. 792

INSTRUCTIONS TO COMMISSIONERS.

(Filed December 22, 1959. John P. Cowart, Clerk,
United States District Court.)

Because of this court's confidence in your integrity, your impartiality, your personal disinterestedness in the proceeding and its results, and your intelligence and ability to discharge the duties imposed upon you, you have been selected and appointed to serve on a Commission in accordance with the provisions of Rule 71 A(h), Federal Rules of Civil Procedure, in the above captioned actions. These instructions are given to guide and assist you.

Your principal duty will be to determine the amount of just compensation which the United States of America should pay to each of the land owners for the estates or

easements acquired in these condemnation proceedings. In making your determination there are certain rules you should follow. It is not contemplated, however, that these instructions shall cover in detail all of your duties, nor touch upon all matters of procedure. You have the powers of a master provided in subsection (c) of Rule 53, Federal Rules of Civil Procedure, and proceedings before you shall be governed by the provisions of paragraphs (1) and (2) of subsection (d) of said Rule 53, to which you should refer.

There is no question as to the Government's right to condemn the property it is condemning. Likewise, there is no question as to the applicability of the Constitutional provision "nor shall private property be taken for public use, without just compensation."

"Just compensation" is frequently and generally regarded as synonymous with "fair market value". When the Government condemns an entire tract of land the sole inquiry is as to the fair market value of the property taken. Sometimes, however, the Government condemns only a portion of a tract, leaving to the owner the remaining portion of the tract. In such case, just compensation equals the fair market value of the portion taken, plus damages, if any, resulting to the portion not taken because of the taking, or because of the use to which the taken portion is to be put. This latter element is known as "severance damages".

The term "fair market value" means the amount of money the property would bring in cash in the open market when sold by a person desiring and willing to sell, but not

obliged to sell, and bought by a person able, desiring and willing to buy, but not obliged to buy. In all cases the fair market value of the property must be determined as of the date of taking—not as of a previous or subsequent date.

In arriving at the fair market value you may consider the uses to which the property was being put on the taking date and you should consider also any other uses to which you find it may have readily been converted, including the highest and best use to which you find it may readily have been converted. In this connection, you should consider only probable uses and not possible or imaginary uses. Possible or imaginary uses would be too remote and speculative. If you should find from the evidence, for example, that certain lands here involved were, on the date of taking, suitable and adaptable for subdivision into small lots or parcels and that such future use of the property was its highest and best use, you must determine the market value in the light of such use, but you are not to arrive at the market value as though the property had already been actually put to such use, unless you find that it had already been put to such use. In other words, you should fix the market value in the light of the highest and best adaptable use of the property for which a market demand exists on the date of the taking, but not as if already adapted to such prospective use. If you should determine that any of the property here involved should be valued on the basis of its suitability and adaptability for subdivision purposes, you should fix that value at a price which you believe a willing buyer and seller would have agreed upon for the property in its condition as of the taking date. In other

words, if the land on the date of taking was undeveloped land, but suitable and adaptable for subdivision purposes, your value under such circumstances would be the price which would have been agreed upon between a willing buyer and a willing seller for undeveloped land with such suitability and adaptability, but not the aggregate retail value of the component parts into which the property had not been subdivided but might thereafter be subdivided.

In determining market value you may consider sales of similar property in the area made either prior to or after, but not remote from, the date of the taking of the property involved. You may also consider a number of other factors including the physical characteristics of the property, its situation in relation to the points of importance in the neighborhood, and the opinion of competent experts. You, of course, are not bound by anyone's opinion and you should follow anyone's opinion only insofar as it impresses you as being reasonable and correct. You should evaluate an expert's opinion and testimony according to the same standards by which you evaluate the testimony of other witnesses. Consider the ability and character of the witness, his actions upon the stand, the weight and process of the reasoning by which he has supported his opinion, his bias or prejudice, if any exists, his interest or lack of interest in the outcome of the hearing, his opportunities for study or observation of the matters about which he testifies, and any other matters which serve to illuminate his statements.

Just compensation is the sum which will put the owner in as good a position pecuniarily, that is financially, as he

would have been in if the property had not been taken—no richer and no poorer. Your duty is to see that the compensation is just not merely to the individual whose property is taken, but also to the public which is to pay for it; and to state that both ways, not merely to the public which is to pay for it, but also to the individual whose property is taken.

You may view the tracts of land involved in these proceedings. The viewing of the land would not be for the purpose of making yourself a witness in the case, but for the purpose of aiding you in better understanding the evidence that will be given.

You will, of course, hold a hearing, or hearings, as contemplated by the rules above mentioned, and you will proceed with all due diligence as is contemplated by said rules. The burden of proof is upon the property owner in each instance to establish by competent evidence the amount of just compensation to which he is entitled. The normal order of procedure, therefore, would be for you to hear first the property owners' evidence and then the Government's.

The Chairman of the Commission is an experienced attorney, and he should determine the admissibility or inadmissibility of any evidence offered by any party.

All members of the Commission have the right to make such examination of any witness as they may desire.

All witnesses shall be placed under oath before testifying.

A competent reporter will be made available to report the proceedings at all hearings.

At the conclusion of your hearing or hearings you shall file a written report with the Clerk of this court setting forth separately your findings of fact and conclusions of law and the amount of just compensation to which you think each property owner or claimant is entitled. The action and report of the Commission shall be determined by a majority.

Before entering upon your duties, and not later than the beginning of your first hearing, each of you shall take and subscribe an oath substantially as follows:

"We, Mallory C. Atkinson, J. P. Champion and Hines Preston, having heretofore been appointed Commissioners in the above entitled causes (stating the causes in the caption of the oath) do solemnly swear that we will faithfully and impartially perform our duties as such Commissioners, agreeable to the order of the court, to the best of our ability and understanding SO HELP US GOD.

"This _____ day of _____, 19____.

If some unanticipated problem should arise in the performance of your duties as Commissioners you may at any time ask the court for additional instructions.

This 22 day of December, 1959.

/s/ W. A. Bootle,

United States District Judge

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS AND ALBANY DIVISIONS**

UNITED STATES OF AMERICA

v.

**2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS**

UNITED STATES OF AMERICA

v.

**1,361.09 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA,
AND CAROLYN GAVIN GIBSON,
ET AL., AND UNKNOWN OWN-
ERS**

**CIVIL ACTION
No. 789**

**CIVIL ACTION
No. 792**

**AMENDMENT TO ORDERS APPOINTING
COMMISSIONERS.**

(Filed June 30, 1960. John P. Cowart, Clerk,
United States District Court.)

The Court having entered original orders in the above captioned actions on December 22, 1959 and April 28, 1960, appointing Commissioners and referring to them for determination the issues of just compensation involved in such actions, and good cause having been shown;

**IT IS HEREBY CONSIDERED, ORDERED AND AD-
JUDGED** that said original orders be and they are hereby amended and supplemented so as to provide that such Commissioners shall not be required to file, with any reports made by them to the Court, any transcript of the proceed-

ings or evidence had at any hearing held before them in connection with their determination of the issues of just compensation involved in these actions.

IT IS FURTHER ORDERED that this amendment to the said original orders shall be and is hereby made retroactive in its effect to December 22, 1959 and April 28, 1960, as to each of said orders respectively and in addition applies to all future hearings held by said Commissioners in the above captioned actions.

IT IS FURTHER ORDERED that the Commissioners shall file all physical exhibits admitted into evidence upon any hearing held by them with the Clerk of this Court in the Albany or Columbus Division of this District as the case may be, and said Clerk is hereby directed to file such exhibits in the particular civil action to which the same shall be applicable.

SO ORDERED AND ADJUDGED, this 30 day of June, 1960.

/s/ W. A. Bootle,

United States District Judge.

This is to certify that I have this day mailed a copy of the within to Honorable Mallory C. Atkinson, attorney at law, First National Bank Building, Macon, Georgia.

This 30th day of June, 1960.

/s/ John P. Cowart.

ORDER ON PRE-TRIAL HEARING BEFORE COMMISSIONERS.

(Filed July 6, 1960. H. Okay Parker, Deputy Clerk,
United States District Court.)

Pursuant to notice to all parties pre trial hearing was held before the Commissioners at the United States Court House in Columbus, Georgia, beginning at 10:00 o'clock a.m. on Thursday, June 30, 1960. Appearing for the Government were Mr. Frank O. Evans, United States Attorney, and Mr. Truett Smith, Assistant United States Attorney. Appearing for the Land Owners were the following:

As to Tract E-524 Mr. Frank Humber in person and his counsel Messrs. Jesse Bowles and Forrest Champion, Mrs. Sarah Lokey King and Mr. Stanley A. Lokey:

As to Tracts H 805, H 805 E1, H 805 E2, H 805 E3 and H 805 E4 Messrs. Bowles and Champion as counsel for Mr. Hoke S. Lindsay:

As to Tracts H 806 and H 806 E Messrs. Grubb and Maistre as counsel for Mrs. Elizabeth G. Logue:

As to Tracts M 1301, M 1301 E1 and M 1301 E2 Messrs. Bowles and Champion as counsel for Mr. Richard B. Gary:

As to Tracts M 1306 and M 1306 E Messrs. Bowles and Champion as counsel for Mr. A. J. Watson:

As to Tracts M 1321, M 1324, M 1330, M 1333 and M 1334 there was no appearance by or for the property owners.

As to Tract M 1348 Mr. A. Edward Smith as counsel for Mr. F. M. Methvin.

Dates were assigned for inspection of the premises by the Commissioners as follows:

The Commissioners will meet with representatives of the Government and representatives of the Land Owners at the Court House in Georgetown, Georgia, at 10:00 o'clock a.m. on Saturday, July 16, 1960 for inspection of Tracts H 805, H 805 E1, H 805 E2, H 805 E3, H 805 E4, H 806, H 806 E, and M 1348.

The Commissioners will meet with representatives of the Government and representatives of the Land Owners at the Court House in Georgetown, Georgia, at 10:00 o'clock a.m. on Monday, July 25, 1960, for inspection of Tracts E 524, M 1301, M 1301 E1, M 1301 E2, M 1306 and M 1306E.

Dates were assigned for evidentiary hearings before the Commission as follows:

As to Tracts M 1348, H 806 and H 806 E, evidentiary hearings will commence at 10:00 o'clock a. m. on Monday, July 18, 1960.

As to all other Tracts evidentiary hearings will commence at 10:00 o'clock a.m. on Tuesday, July 26, 1960.

All evidentiary hearings will be held in the United States Court Room in Columbus, Georgia.

As to Tract M 1348 it was agreed that each side would be limited to the offering of not more than three comparable sales and no such sale would ante date the date of the declaration of taking by more than five years.

As to Tracts H 806 and H 806 E it was agreed that each side would be limited to the offering of not more than five

comparable sales and no such sale would ante date the date of the declaration of taking by more than five years.

Counsel present agreed to make informal discovery between themselves before the commencement of the evidentiary hearing, to further consider the feasibility of consolidation of any of the Tracts for hearing, and it was further agreed that counsel would not insist upon the strict requirements of identification and authentication of maps, plats, photographs, aerial photographs, deeds and records.

This July 5, 1960, nunc pro tunc for June 30, 1960.

Mallory C. Atkinson,
J. P. Champion,
Hines Preston,
Commissioners.

By /s/ Mallory C. Atkinson,
Mallory C. Atkinson,
Chairman.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DISTRICT

United States of America,

vs.

2,872.88 acres of land, more or less,
situate in Clay and Quitman
Counties, State of Georgia, and
Frank Humber et al. and unknown
owners.

Civil Action

No. 789

Tracts No.

H805,

H805E1,

H805E2,

H805E3,

H805E4.

REPORT OF COMMISSIONERS.

(Filed August 19, 1960. Walter F. Doyle, Deputy Clerk,
United States District Court.)

To the Honorable W. A. Bootle, United States Judge for
the Middle District of Georgia:

Pursuant to notice given to all parties concerned, the
evidentiary hearing on condemnation of the above listed
tracts was held in the United States Court Room in Colum-
bus, Georgia, beginning at 10:00 o'clock a.m. on July 26,
1960 and continuing through July 28, 1960.

It was stipulated by the parties that title to the several
tracts at the time of the taking by the United States was
vested in Hoke S. Lindsey.

Tract H805 is comprised of 963 acres as shown by the
maps and plats placed in evidence and in addition some
52 acres more or less situate between the west line of such
tract along the east bank of the Chattahoochee River
as shown on such maps and the west bank of the Chat-
tahoochee River, the actual west property line of the Land

Owner; Tract H805E1 is a perpetual flowage easement over 2.10 acres; Tract H805E2 is a perpetual flowage easement over 3.40 acres; Tract H805E3 is a perpetual flowage easement over 3.40 acres; Tract H805E4 is a perpetual flowage easement over 1.80 acres. The date of taking of the land by the Government was May 15, 1959.

At the conclusion of the evidence the parties waived oral argument, and it was agreed that the Commission would take the matter under advisement, with either party being entitled to file written briefs and argument, the Commission to render its decision as to the amount of just compensation at a later date.

The hearing was attended by Miss Eunice Ward, special court reporter, and all of the testimony produced was taken down by her. A transcription of the proceedings will be available in the event desired. The documentary exhibits, maps, plats, photographs, etc., introduced into evidence have been placed in the custody of the Clerk.

In accordance with the prior order of this Court, the Commission makes the following summarization of evidence, findings of fact, conclusions of law, and award of just compensation.

Summarization of Evidence.

The Commission went upon and over the property on July 16, 1960. A representative from the Government was present, and together with the Land Owner, accompanied the Commission on the inspection. The improvements had been removed and none of the land was in cultivation with annual row crops. However, the general topography and

contour of the land, the character of the soil, lands theretofore devoted to row crops and the characteristics of the land were noted by the Commission. The Commission has given consideration to charts, maps, plats, photographs, etc., which were introduced into evidence by the parties.

(a) EVIDENCE FOR THE LAND OWNER.

1. Hoke S. Lindsey, the Land Owner, testified that he bought the land under deed dated January 1, 1945, and that the highest and best use of the land at the time of the taking was for row cropping, cattle farming and timber growing. He further testified as to the production record of the land and the fencing located thereon. He gave as his opinion value of the land taken on the date taken \$140.00 per acre. He testified that the taking left him with an over supply of farm buildings for the remainder and resulted in a substantial reduction in value of the acreage remaining. He testified that the taking took the "heart of the farm" and left him with a "limited water supply" leaving his adjacent lands reduced in value to \$75.00 per acre. He further testified that his home place, an 86 acre tract 4 miles east of subject tract was operated with subject tract "as a unit" and it was damaged by the taking in the amount of \$15,000.00. He had farmed the entire acreage with six tractors.

2. Lewis Moore, Jr., owner of other lands in the community, testified as to his familiarity with the subject tract and also other lands and land values in the community. He gave as his opinion the fair market value of the subject tract on the date of taking as \$120.00 to \$125.00

per acre and gave as his estimate of damage to the remainder from the taking \$45.00 per acre.

3. T. J. Crittenden, C.P.A., offered to testify as to the gross revenue received by Land Owner from farming operations, but this evidence was excluded on motion of the District Attorney.

4. H. P. Mason, farmer, testified as to his familiarity with the subject tract and farm lands and the value of farm lands in the vicinity. He gave as his opinion the fair market value of the property taken on the date taken as \$150.00 per acre and his opinion of the value of the remainder left from the taking as reduced from \$150.00 per acre to \$80.00 per acre.

5. B. C. Brumbelow, county agent, testified that he had known subject tract for some twenty years and knew its productivity. He also said he was familiar with lands and land values in the community. He gave as his opinion value of the subject tract on the date taken \$110.00 per acre.

6. T. W. Mobley, banker and farmer, testified that he sold subject property to the Land Owner, and farmed the property theretofore. He stated that he was familiar with this property and also farm lands generally and farm land values generally in the community. He gave as his opinion value of the subject tract on the date taken \$125.00 per acre.

7. W. O. Sellers, county agent, grantor in a sale of other property testified as to some details of that property and sale offered as a comparable sale.

8. M. J. Williamson, land appraiser and expert value witness, testified as to his examination and appraisal of subject tract and study of local market conditions. He testified that he evaluated the property primarily from the market data or comparable sales approach though he made reference to the revenue produced and as to improvements the cost approach. He stated that he considered the highest and best use of the property at the time taken to be general agriculture comprised of row crops, pasture and timber. He gave as his opinion of fair market values of the property on the date taken by the Government:

Entire tract	\$156,000.00
Remainder after taking	42,000.00

Difference between before and after taking \$114,000.00

He testified that in computing severance damage he considered the home place as a part of the farm unit and attributed severance damage as follows:

Home place valued before taking at	\$ 34,600.00
valued after taking at	20,400.00
Entire River tract valued before taking at	121,400.00
Remainder valued after taking at	21,600.00
In other computation he evaluated	
Improvements on property taken	225.00
Value of land taken in fee	87,140.00
Severance damages (including easements)	26,635.00
Total	\$114,000.00

(b) EVIDENCE FOR THE GOVERNMENT.

1. Thos. H. Hall, real estate appraiser and expert value witness, testified as to his inspection and appraisal of sub-

ject tract including soils. He further testified concerning his study of market conditions in the community and gave details concerning five land sales of other properties offered as comparable sales. He identified various exhibits including photographs, maps, plats, and chart of the comparable sales. He stated that the highest and best use of the property at the time taken was row cropping, pasture and timber. He gave as his opinion of fair market values of the property on the date taken by the Government:

Entire tract	\$104,625.00
Remainder after taking	47,825.00
Property taken	\$ 56,800.00
Plus Severance Damages of	1,825.00
Total	\$ 58,625.00

In computing severance damages he made no allowance for severance damage to the 86 acre home place located some four miles away. He did allow \$960.00 for fencing along the line of taking and \$540.00 for needed road construction. His computation included an allowance of \$104.35 for the easements, which amount was included in the \$56,800.00 figure for property taken.

(c) REBUTTAL EVIDENCE FOR LAND OWNER.

1. F. C. Clapp, county agent, testified as to familiarity with subject tract and the nature of the soils thereon. He testified that he was also familiar with those lands sales of which had been offered by the Government as comparable sales. He testified as to some similarities and some marked dissimilarities of these tracts when compared with the subject tract.

2. Miss Janice Lindsey testified that there were 592.5 acres of open land on the subject tract.

3. Land Owner, recalled, testified he had lost no crops from excessive wetness. He further estimated cost of fencing at \$100.00 to \$150.00 per mile.

Thereupon the evidence was closed.

Findings of Fact.

The Commission finds from the evidence as a whole the following:

1. Hoke S. Lindsey, according to the stipulation of the parties, was the owner of the several tracts herein described at the time of the taking by the United States on May 15, 1959.

2. The highest and best use to which these tracts could have been put at the time taken by the Government was that of agriculture comprised of row crops, pasture and timber.

3. The Commission finds as a matter of fact that no severance damages are allowable as to the 86 acre home place located some four miles from the property taken.

4. The property remaining in the river tract after the taking was comprised of some 502.10 acres out of a theretofore total acreage in one body of some 1527 acres more or less, and the highest and best use of the remaining acreage after the taking was pasturage and timber growing. Furthermore, the improvements located on this remainder constructed to serve the larger acreage left the remainder "over-improved." As a consequence of all of which the Com-

mission finds the owner is entitled to severance damages in the amount of \$15,785.00.

5. The Commission finds that the fair market value of the fee in Tract H805, including the land lying between the banks of the river, was \$96,300.00 when it was taken by the United States on May 15, 1959.

6. The Commission finds that the fair market value of the easement over Tract H805E1 was \$100.00 when it was taken by the United States on May 15, 1959.

7. The Commission finds that the fair market value of the easement over Tract H805E2 was \$170.00 when it was taken by the United States on May 15, 1959.

8. The Commission finds that the fair market value of the easement over Tract H805E3 was \$170.00 when it was taken by the United States on May 15, 1959.

9. The Commission finds that the fair market value of the easement over Tract H805E4 was \$90.00 when it was taken by the United States on May 15, 1959.

10. Hoke S. Lindsey is entitled to an award and judgment against the United States for the taking of the property in question in the amount of \$112,615.00, together with interest on that part of the amount so awarded which is in excess of the deposit made by the United States at the rate of 6% per annum in accordance with the law.

Conclusions of Law.

1. The United States had the right, in the exercise of its power of eminent domain, to take all of the property of Hoke S. Lindsey involved in these proceedings.

2. Hoke S. Lindsey is entitled to just compensation for the taking thereof, which compensation must represent the fair market value of all of the property taken as of the date it was taken by the United States.

3. Hoke S. Lindsey is further entitled to severance damages as a part of just compensation.

4. The entire body of these several tracts of land involved in this proceeding is situated in Clay and Quitman Counties, Georgia, within the Columbus Division of the United States District Court for the Middle District of Georgia; and, accordingly, the Commission, as constituted by this Court in its order entered in these proceedings on December 22, 1959, has jurisdiction for the purpose of determining the amount of just compensation to be paid by the United States for the taking of such land.

Wherefore, the undersigned Commissioners recommend to the Court that judgment be entered herein awarding just compensation to Hoke S. Lindsey as the owner of the lands condemned in the amount and in the manner hereinabove specified.

Respectfully submitted this August 19, 1960.

/s/ Mallory C. Atkinson
Mallory C. Atkinson,
Chairman

/s/ J. P. Champion
J. P. Champion

/s/ Hines Preston
Hines Preston

Commissioners

Copies mailed to parties by Judge Atkinson on 8/19/60.

/s/ John P. Cowart
Clerk

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

United States of America,

vs.

2,872.88 acres of land more or less,
situated in Clay and Quitman
Counties, State of Georgia, and
Frank Humber et al. and un-
known owners.

Civil Action
No. 789
Tracts No. M 1306
and M 1306E

REPORT OF COMMISSIONERS.

(Filed August 19, 1960. Walter F. Doyle, Deputy Clerk,
United States District Court.)

To the Honorable W. A. Bootle, United States Judge for
the Middle District of Georgia.

Pursuant to notice given to all parties concerned, the
evidentiary hearing on condemnation of the above listed
tracts was held in the United States Court Room in Colum-
bus, Georgia, beginning at 9:30 o'clock A. M. on August
3, 1960 and continuing through August 4, 1960.

The owner of the two tracts listed at the time of the
taking by the United States, according to the stipulation
of the parties, was A. J. Watson.

Tract M 1306 represents the fee in 330 acres of land
and Tract M 1306E is a perpetual flowage easement over
7.58 acres. The date of the taking of the land by the
United States was May 15, 1959.

It was further stipulated that the value of the timber
on the land taken at the time taken was \$1,082.00.

At the conclusion of the evidence, oral argument was waived and it was agreed that the Commission would take the matter under advisement, with counsel for either party being entitled to file written briefs and argument, the Commission to render its decision as to the amount of just compensation at a later date.

The hearing was attended by Mr. Claude Joiner, Jr., official court reporter, and all of the testimony produced was taken down by him. A transcription of the proceedings will be available in the event desired. All documentary evidence, maps, plats, charts, photographs and the like have been placed in the custody of the Clerk.

In accordance with the prior order of this Court, the Commission makes the following summarization of evidence, findings of fact, conclusions of law, and award of just compensation.

Summarization of Evidence.

The Commission went upon and over the property on July 25, 1960. A representative of the Government was present and, together with Mr. A. J. Watson, the Land Owner, accompanied the Commissioners on this inspection. At the time of the inspection no substantial improvements remained on the property and none of the property was in cultivation with annual row crops. However, the general topography and contour of the land, the character of the soil, lands theretofore devoted to row crops and other characteristics of the land were noted by the Commission. The Commission has given consideration to charts, maps, plats, photographs, etc., which were introduced into evidence by the parties.

(a) EVIDENCE FOR THE LAND OWNER.

1. It was stipulated that the testimony of Raymond Smith as to the cost of fencing as given in connection with the evidentiary hearing on Tract M 1301, Gary, might be considered by the Commission. He had testified to estimated cost of fencing as 1240 hog wire with 1 strand barbed wire \$1,094.00 per mile and 1240 hog wire with 2 strands barbed wire \$1,128.00 per mile both figures to be applied as to cleared land.

2. Joe J. Hurst testified as to his evaluation of a part of subject tract on the basis of use as a subdivision for home sites. A proposed plat of such subdivision was offered and excluded from evidence on the motion of the District Attorney on the ground that the plat was not sufficiently authenticated and no market was shown to exist for any such subdivision lots to make the evidence acceptable as relevant to a determination of fair market value.

M. J. Williamson, real estate appraiser and expert value witness, testified as to his inspection and appraisal of the subject tract and his study of the local market conditions as to farm properties. He testified that he found no sales of other tracts which in his judgment served as sufficiently comparable to the subject tract to serve as a basis for valuation on the market or comparable approach. He based his opinion on his study of the subject tract including its productivity and rental value and his experience in this and other areas. He defined the highest and best use of subject tract as agriculture, testified in some detail as to his evaluation of improvements and gave the land uses as follows: entire tract before taking 72.25% open

land and 26.5% woodland; land taken 75% open and 22.72% woodland; land remaining after taking 55.55% open and 44.45% woodland. He gave as his opinion the fair market value of the subject tract on the date of taking as follows:

Entire Tract	\$52,500.00
Remainder after taking	2,400.00
Total amount of claim	<u>\$50,100.00</u>

In a recomputation of the amount recoverable he testified to values as follows:

Value of land taken in fee	\$36,125.00
Value of contribution of improvements	12,700.00
Severance damage including easements	<u>1,275.00</u>
Total amount of claim	<u>\$50,100.00</u>

4. Joe Gary testified that he measured the fencing on the taken area and found 4.036 miles of hog wire with 2 strands barbed wire 1.667 miles of hog wire with 1 strand barbed wire .668 miles of 3 strands barbed wire and .1 miles of 4 strands barbed wire. He stated the line between property taken and remainder would call for 3400 ft. of fencing. On cross-examination he testified that of these fences some 3 miles constituted boundary fences.

5. J. R. Ogletree, sheriff, testified as to his familiarity with subject tract having owned the adjacent tract, and his familiarity with farm lands and farm land fair market values in the community. He gave as his opinion the fair market value of the land taken on the date taken as \$200.00 per acre. On cross-examination he testified that he did not know the highest and best use of the land taken when taken.

6. A. J. Watson, the Land Owner, testified in some detail as to fencing, gates, cattle gaps, improvements on the property, its proximity to Georgetown, the dwelling house, availability of electricity, absence of erosion, level character of land with no terraces and the production record of the farm operations. He stated that he was familiar with farm lands and farm land fair market values in the community. He gave as his opinion the fair market value of the subject tract on the date taken as follows:

Entire Tract	\$96,000.00
Remainder after taking	2,800.00
Amount of claim	<hr/> \$93,200.00

He testified that since the taking he had built a new access road to the remainder at a cost of \$500.00, and placed a valuation on improvements of \$34,430.00.

7. Murray Heath, production credit association manager, testified as to his familiarity with the subject tract and his familiarity with farm lands and farm land fair market values in the community. He gave as his opinion the fair market value of the land taken on the date taken as \$66,000.00.

(b) EVIDENCE FOR THE GOVERNMENT.

1. T. H. Hall, real estate appraiser and expert value witness, testified as to his inspection and appraisal of the subject tract, including discussion with Land Owner, consideration of improvements, production records and nature and usage of premises. He fixed the highest and best use of the entire tract on the date of taking as row cropping, pasture and timber, and of the remainder after taking as

timber. He testified as to his study of the local market conditions and placed his primary reliance on the market data or comparable approach, stating that inadequacy of records would preclude reliability of the income approach. He identified maps, plats, chart and photographs introduced by the Government and gave details of four transactions relied upon as comparable sales. He gave as his opinion of the fair market value of the subject tract on the date of taking the following:

Entire tract	\$37,700.00
Remainder after taking	2,650.00
Amount of claim	<u>\$35,050.00</u>

A recomputation of these figures he testified showed such values as:

Property taken (fee and easement)	\$34,825.00
Severance damage	225.00
Amount of claim	<u>\$35,050.00</u>

2. C. W. McKinnon, real estate appraiser and expert value witness testified as to his inspection and appraisal of the subject tract, his study of the local market and farm properties and farm fair market values. He gave details of a sales transaction of other property offered as a comparable sale. He fixed the highest and best use of the entire tract on the date of taking as general farming, and of the remainder after taking as woodland. He gave as his opinion of the fair market value of the subject tract on the date of taking the following:

Entire tract	\$35,000.00
Remainder after taking	1,660.00
Amount of Claim	<u>\$33,340.00</u>

He testified that these figures included allowance of \$94.00 for the easement and \$250.00 as severance damages.

(c) **REBUTTAL EVIDENCE FOR THE LAND OWNER.**

1. A. J. Watson, the Landowner, recalled testified as to the location of hog wire fencing on the property.

2. Linwood Watson testified as to his familiarity with the tract involved in the first of the comparable sales offered by the Government and pointed out distinctions and differences between that tract and the subject tract.

Thereupon the evidence was closed.

Findings of Fact.

The Commission finds from the evidence as a whole the following:

1. A. J. Watson, in accordance with the stipulation of the parties was the owner of the two tracts herein described at the time of the taking by the United States on May 15, 1959.

2. The highest and best use to which the entire tract could have been put at the time of the taking by the Government was general agriculture consisting of row crops, pasturage, and timber. The highest and best use to which the remainder after the taking could have been put at the time of the taking was timber growing.

3. The tract remaining after the taking is made up of 62.42 acres out of the theretofore existent tract of 400 acres all in one body. The value of the remaining acreage for agricultural purposes has been reduced and accessibility impaired. As a consequence the Commission finds that A. J. Watson is entitled to severance damages in the amount of \$3,500.00.

4. The Commission finds that the fair market value of the fee in Tract M 1306 was \$52,950.00 when it was taken by the United States on May 15, 1959.

5. The Commission finds that the fair market value of the easement over Tract M 1306E was \$240.00 when it was taken by the United States on May 15, 1959.

6. A. J. Watson is entitled to an award and judgment against the United States for the taking of the property in question in the amount of \$56,690.00, together with interest on that part of the amount so awarded which is in excess of the deposit made by the United States at the rate of 6% per annum in accordance with the law.

Conclusions of Law.

1. The United States had the right, in the exercise of its power of eminent domain, to take all of the property of A. J. Watson involved in these proceedings.

2. A. J. Watson as owner of these tracts of land is entitled to just compensation for the taking thereof, which compensation must represent the fair market value of all of the property taken by the United States.

3. A. J. Watson as owner of these tracts of land is further entitled to severance damages arising out of the taking as a part of such just compensation.

4. The entire body of these tracts of land involved in this proceeding is situated in Quitman County, Georgia, within the Columbus Division of the United States District Court for the Middle District of Georgia; and accordingly, the Commission as constituted by the Court in its order entered in these proceedings on December 22, 1959, has jurisdiction for the purpose of determining the amount of just compensation to be paid by the United States for the taking of such land.

Wherefore, the undersigned Commissioners recommend to the Court that judgment be entered herein awarding just compensation to A. J. Watson as the owner of the lands condemned in the amount and in the manner hereinabove specified.

Respectfully submitted this August 19, 1960.

/s/ Mallory C. Atkinson,
Mallory C. Atkinson,
Chairman,

/s/ J. P. Champion,
J. P. Champion,

/s/ Hines Preston,
Hines Preston,
Commissioners.

Copies mailed by Judge Atkinson to parties on 8/19/60.

/s/ John P. Cowart,
Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER ET AL. AND
UNKNOWN OWNERS,

Defendants.

CIVIL ACTION

No. 789

TRACTS Nos.

H-805,

H-805-E-1,

H-805-E-2,

H-805-E-3,

and H-805-E-4.

OBJECTIONS TO REPORT OF COMMISSIONERS.

(Filed August 29, 1960. Jennie L. Stricklin, Deputy
Clerk, United States District Court.)

The United States of America, plaintiff in the above
entitled cause, objects to the Report of Commissioners
filed in this cause on August 19, 1960, on the following
grounds:

1. The Report does not contain sufficient specific
findings as to the matters on which the Commissioners
based their valuation.

2. The Report does not sufficiently set forth the
principles of law which the Commissioners applied in ar-
riving at their conclusion as to value.

3. The award is excessive, outside the range of any
proper testimony, against the weight of the evidence and
clearly shows that the Commissioners disregarded recent
sales of similar properties.

4. The award is outside the range of market value and therefore, clearly erroneous.

5. The Commissioners erred in failing to exclude the testimony of the landowner whose measure of value was founded primarily on an income approach and it is impossible to determine to what extent, if any, this testimony entered into the Commissioners valuation.

Wherefore, plaintiff moves that the Court reject the Report and the findings and conclusions of the Commissioners and make an independent valuation of its own to conform with the clear weight of the evidence as to fair market value or in the alternative remand to the Commissioners for (1) a re-determination of the issue of just compensation in the terms of fair market value with appropriate additional instructions as to the use of comparable sales, the weight to be accorded a view of the premises, the irrelevancy of consequential damages and as to the guide of the recent sales of similar properties when fair market value can be thus ascertained, and (2) proper findings as to the basic facts together with the principles of law which were applied in arriving at conclusion of value.

Respectfully submitted,

/s/ Truett Smith,
Truett Smith,

Assistant United States
Attorney.

Address:

P. O. Box 118,
Macon, Georgia.

Certificate of Mailing.

I, Truett Smith, Assistant United States Attorney, hereby certify that on this 26th day of August, 1960, I, mailed a copy of the foregoing objections to the attorneys for Hoke S. Lindsey, Mr. Jesse G. Bowles, Cuthbert, Georgia, and Mr. Forrest L. Champion, Jr., P. O. Box 196, Columbus, Georgia, by depositing the same in the United States mail in a franked envelope addressed as above set out.

/s/ Truett Smith,
Truett Smith,
Assistant United States
Attorney.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA,

vs.

**2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER ET AL. AND
UNKNOWN OWNERS.**

CIVIL ACTION

No: 789

**Tracts Nos. M 1306
and M 1306E.**

OBJECTIONS TO REPORT OF COMMISSIONERS.

(Filed August 29, 1960. Jennie L. Stricklin, Deputy
Clerk, United States District Court.)

The United States of America, plaintiff in the above-entitled cause, objects to the Report of Commissioners filed in this cause on August 19, 1960, on the following grounds:

1. The Report does not contain sufficient specific findings as to the matters on which the Commissioners based their valuation.

2. The Report does not sufficiently set forth the principles of law which the Commissioners applied in arriving at their conclusion as to value.

3. The award is excessive, outside the range of any proper testimony, against the weight of the evidence and clearly shows that the Commissioners disregarded recent sales of similar properties.

4. The award is outside the range of market value and therefore clearly erroneous.

5. The Commissioners erred in failing to exclude the testimony of the landowner's witness, M. J. Williamson, whose measure of value was founded in part on capitalization of income approach and whose measure of value did not meet the legal criteria for determining fair market value and it is impossible to determine to what extent, if any, this testimony entered into the Commissioners' valuation.

Wherefore, plaintiff moves that the Court reject the Report and the findings and conclusions of the Commissioners and make an independent valuation of its own to conform with the clear weight of the evidence as to fair market value or in the alternative remand to the Commissioners for (1) a re-determination of the issue of just compensation in the terms of fair market value with appropriate additional instructions as to the use of comparable sales, the weight to be accorded a view of the

premises, the irrelevancy of consequential damages and as to the guide of the recent sales of similar properties when fair market value can be thus ascertained, and (2) proper findings as to the basic facts together with the principles of law which were applied in arriving at conclusion of value.

Respectfully submitted,

/s/ Truett Smith,
Truett Smith,
Assistant United States
Attorney.

Address:

P. O. Box 118,
Macon, Georgia.

Certificate of Mailing.

I, Truett Smith, Assistant United States Attorney, hereby certify that on this 26th day of August, 1960, I mailed a copy of the foregoing objections to the attorneys for A. J. Watson, Mr. Jesse G. Bowles, Cuthbert, Georgia, and Mr. Forrest L. Champion, Jr., P. O. Box 196, Columbus, Georgia, by depositing the same in the United States Mail in a franked envelope addressed as above set out.

/s/ Truett Smith,
Truett Smith,
Assistant United States
Attorney.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA

v.

**2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS**

CIVIL ACTION

No. 789

**TRACTS Nos. H-
805, H-805-E-1, H-
805-E-2, H-805-E-3
and H-805-E-4**

ORDER ADOPTING REPORT OF COMMISSIONERS.

(Filed February 13, 1961. John P. Cowart, Clerk,
United States District Court.)

The Commissioners having filed their report fixing just compensation, condemnor having filed objections to said report, both sides having filed briefs in support of, or in opposition thereto, and said report, objections and briefs having been carefully considered,

The said report of the Commissioners is hereby approved and adopted by the court.

Let counsel for condemnor prepare and submit an appropriate judgment.

SO ORDERED, this 10 day of February, 1961.

/s/ W. A. Bootle,

United States District Judge.

This is to certify that I have this day mailed a copy of the above to Mr. Jesse G. Bowles, Atty., Cuthbert, Ga.; Mr. Forrest L. Champion, Atty., Columbus, Ga.; Foley, Chappell, Young & Hollis, Attys., Columbus, Ga., and to

Mr. Truett Smith, Asst. U. S. Atty., Macon, Ga. This
Feb. 13, 1961.

/s/ John P. Cowart,
Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA

v.
2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS

CIVIL ACTION
No. 789
TRACTS Nos. M-
1306 and M-1306-E

ORDER ADOPTING REPORT OF COMMISSIONERS.

(Filed February 13-1961. John P. Cowart, Clerk,
United States District Court.)

The Commissioners having filed their report fixing
just compensation, condemnor having filed objections to
said report, both sides having filed briefs in support of or
in opposition thereto, and said report, objections and briefs
having been carefully considered,

The said report of the Commissioners is hereby ap-
proved and adopted by the court.

Let counsel for condemnor prepare and submit an ap-
propriate judgment.

SO ORDERED, this 10 day of February, 1961.

/s/ W. A. Bootle,

United States District Judge.

This is to certify that I have this day mailed a copy of the above to Mr. Truett Smith, Asst. U.S. Atty.; Mr. Jesse G. Bowles, Atty, Cuthbert, Ga.; Mr. Forrest L. Champion, Atty, Columbus, Ga.; and to Foley, Chappell, Young & Hollis, Attys., Columbus, Ga. This Feb. 13, 1961.

/s/ John P. Cowart,
Clerk.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

**2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS**

Defendants.

**CIVIL No. 789
TRACTS Nos. H-
805, H-805-E-1, H-
805-E-2, H-805-E-3
and H-805-E-4**

JUDGMENT.

(Filed April 25, 1961. Walter F. Doyle, Deputy Clerk,
United States District Court.)

That an order heretofore entered adopted and confirmed the Commissioners' Report on Tracts Nos. H-805, H-805-E-1, H-805-E-2, H-805-E-3 and H-805-E-4 finding the just compensation for the taking of the property being acquired herein as Tracts Nos. H-805, H-805-E-1, H-805-E-2, H-805-E-3 and H-805-E-4 to have been the sum of \$112,615.00 at the time of the taking thereof by the United States of America, IT IS ADJUDGED, ORDERED AND

DECREED that Hoke S. Lindsey do have and recover of and from the United States of America the amount of just compensation of \$112,615.00.

It appearing to the Court:

That from Certificates of the Tax Collectors of Quitman and Clay Counties, Georgia, exhibited to the Court by the United States Attorney, that there are no taxes due on these tracts, and

That the United States of America has the right to condemn the subject property interests for public use, and

That the estate or interest condemned and the legal description of the subject property are both defined by the Petition in Condemnation and the Declaration of Taking filed herein, and title to said estate or interest in said subject property is vested in the United States, and

That the United States of America deposited in the Registry of this Court on May 15, 1959, at the time of filing its Declaration of Taking in this proceeding, the sum of \$54,905.00, as the estimated compensation for said property interests, and that the difference between the amount of the deposit of estimated compensation, as aforesaid, and the value of said property interests, as aforesaid, is the sum of \$57,710.00, and

That an order heretofore entered found that the United States of America was entitled to a reasonable rental of \$1,892.72 arising under a claim for reasonable rental filed against the former landowner on February 10, 1961.

Therefore, IT IS ORDERED:

That judgment be, and the same hereby is, rendered against the United States of America and in favor of Hoke

S. Lindsey in the sum of \$55,817.28 (representing the difference between \$57,710.00 and \$1,892.72), together with interest on \$57,710.00 from May 15, 1959, until February 10, 1961 (representing the date the United States of America filed its claim for reasonable rental), at the rate of six percent per annum, also together with interest on \$55,817.28 at the rate of six percent per annum from February 10, 1961, until payment into the Registry of this Court.

This cause is held open for such further orders, judgments and decrees as may be necessary in the premises.

This 24 day of April, 1961.

/s/ W. A. Bootle,

United States District Judge.

Presented by:

/s/ Truett Smith,
Truett Smith,

Assistant United States Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS

Defendants.

CIVIL No. 789
TRACTS Nos. M-
1306 and M-1306-E

JUDGMENT.

(Filed April 25, 1961. Walter F. Doyle, Deputy Clerk,
United States District Court.)

That an order heretofore entered adopted and confirmed the Commissioners' Report on Tracts Nos. M-1306 and M-1306-E finding the just compensation for the taking of the property being acquired herein as Tracts Nos. M-1306 and M-1306-E to have been the sum of \$56,690.00 at the time of the taking thereof by the United States of America, IT IS ADJUDGED, ORDERED AND DECREED that A. J. Watson do have and recover of and from the United States of America the amount of just compensation of \$56,690.00.

It appearing to the Court:

That from Certificates of the Tax Collectors of Quitman County, Georgia, and Georgetown, Georgia, exhibited to the Court by the United States Attorney, that there are no taxes due on these tracts, and

That the United States of America has the right to condemn the subject property interests for public use, and

That the estate or interest condemned and the legal description of the subject property are both defined by the Petition in Condemnation and the Declaration of Taking filed herein, and title to said estate or interest in said subject property is vested in the United States, and

That the United States of America deposited in the Registry of this Court on May 15, 1959, at the time of filing its Declaration of Taking in this proceeding, the sum of \$39,135.00, as the estimated compensation for said property interests, and that the difference between the amount of the deposit of estimated compensation, as aforesaid, and the value of said property interests, as aforesaid, is the sum of \$17,555.00, and

That an order heretofore entered found that the United States of America was entitled to a reasonable rental of \$1,316.00 arising under a claim for reasonable rental filed against the former landowner on February 10, 1961.

Therefore, IT IS ORDERED:

That judgment be, and the same hereby is, rendered against the United States of America and in favor of A. J. Watson in the sum of \$16,239.00 (representing the difference between \$17,555.00 and \$1,316.00), together with interest on \$17,555.00 from May 15, 1959, until February 10, 1961 (representing the date the United States of America filed its claim for reasonable rental), at the rate of six percent per annum, also together with interest on \$16,239.00 at the rate of six percent per annum from February 10, 1961, until payment into the Registry of this Court.

This cause is held open for such further orders, judgments and decrees as may be necessary in the premises.

This 24 day of April, 1961.

/s/ W. A. Bootle,

United States District Judge.

Presented by:

/s/ Truett Smith,

Truett Smith, Jr.

Assistant United States Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA

Plaintiff

v.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS

Defendants

CIVIL No. 789
TRACTS Nos. H-
805, H-805-E-1, H-
805-E-2, H-805-E-3
and H-805-E-4

NOTICE OF APPEAL.

(Filed June 22, 1961. H. Okay Parker, Deputy Clerk,
United States District Court.)

Comes now Floyd M. Buford, United States Attorney,
and Truett Smith, Assistant United States Attorney, coun-
sel for appellant, the United States of America, and hereby
gives notice of appeal to the United States Court of Ap-

peals for the Fifth Circuit from the final judgment entered in this cause on April 25, 1961.

Floyd M. Buford,
United States Attorney,

By: /s/ Truett Smith,
Truett Smith
Assistant United States Attorney.

Address:

P. O. Box 118,
Macon, Georgia.

Certificate of Service.

I hereby certify that a true and exact copy of the above and foregoing Notice of Appeal has been served on Jesse G. Bowles, Cuthbert, Georgia; Kelly, Champion & Henson, Columbus Bank and Trust Company Building, Columbus, Georgia; Frank D. Foley and Bentley H. Chappell, The Fourth National Bank Building, Columbus, Georgia, attorneys of record for Hoke S. Lindsey, former owner, by mailing the copy thereof to them at their respective addresses, as aforesaid.

This 21st day of June, 1961.

/s/ Truett Smith,
Truett Smith,
Assistant United States Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA
Plaintiff

v.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS

Defendants

CIVIL No. 789
TRACTS Nos. M-
1306 and M-1306-E

NOTICE OF APPEAL.

(Filed June 22, 1961. H. Okay Parker, Deputy Clerk,
United States District Court.)

Comes now Floyd M. Buford, United States Attorney,
and Truett Smith, Assistant United States Attorney, coun-
sel for appellant, the United States of America, and hereby
gives notice of appeal to the United States Court of Ap-
peals for the Fifth Circuit from the final judgment en-
tered in this cause on April 25, 1961.

Floyd M. Buford,
United States Attorney,

By: /s/ Truett Smith,
Truett Smith

Assistant United States Attorney.

Address:

P. O. Box 118,
Macon, Georgia.

Certificate of Service.

I hereby certify that a true and exact copy of the above and foregoing Notice of Appeal has been served on Jesse G. Bowles, Cuthbert, Georgia; Kelly, Champion & Henson, Columbus Bank and Trust Company Building, Columbus, Georgia; Frank D. Foley and Bentley H. Chappell, The Fourth National Bank Building, Columbus, Georgia, attorneys of record for A. J. Watson, former owner, by mailing the copy thereof to them at their respective addresses, as aforesaid.

This 21st day of June, 1961.

/s/ Truett Smith,
Truett Smith,

Assistant United States Attorney.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA
Plaintiff

v.

**2,872.38 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS**

Defendants

**CIVIL No. 789 •
TRACTS Nos. H-
805, H-805-E-1, H-
805-E-2, H-805-E-3
and H-805-E-4**

**ORDER TRANSMITTING ORIGINAL PAPERS
AND EXHIBITS.**

(Filed November 3, 1961. John P. Cowart, Clerk,
United States District Court.)

It appearing to the Court that the original papers and exhibits, comprising the entire record of the above-entitled

case, should be sent to the United States Court of Appeals for the Fifth Circuit in lieu of copies,

It is therefore ORDERED pursuant to Rule 75(i), F.R. Civ. P., that the Clerk of this Court is to transmit, in physical form and without copying, to the Clerk of the United States Court of Appeals for the Fifth Circuit, the original papers and exhibits comprising the entire record in this case, and

It is further ORDERED that the original papers and exhibits shall be received by the Clerk of the Court of Appeals and held by him during the pending of the appeal herein for the use of the Court and counsel, and

It is further ORDERED that after the termination of the proceedings on appeal the Clerk of the Court of Appeals shall return the original papers and exhibits to the Clerk of this Court.

This 3 day of November, 1961.

/s/ W. A. Bootle,

United States District Judge.

Presented by:

/s/ Truett Smith,
Truett Smith,

Assistant United States Attorney.

Certificate of Service.

I hereby certify that a true and exact copy of the above and foregoing Order Transmitting Original Papers and Exhibits has been served on Jesse G. Bowles, Cuthbert, Georgia; Kelly, Champion & Henson, Columbus Bank and Trust Company Building, Columbus, Georgia; Frank

D. Foley and Bentley H. Chappell, The Fourth National Bank Building, Columbus, Georgia, attorneys of record for Hoke S. Lindsey, former owner, by mailing the copy thereof to them at their respective addresses, as aforesaid.

This 3 DAY OF NOVEMBER, 1961.

/s/ Truett Smith,
Truett Smith,

Assistant United States Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA
Plaintiff

v.

2,872.88 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES,
STATE OF GEORGIA, AND
FRANK HUMBER, ET AL., AND
UNKNOWN OWNERS

Defendants

CIVIL No. 789
TRACTS Nos. M-
1306 and M-1306-E

**ORDER TRANSMITTING ORIGINAL PAPERS
AND EXHIBITS.**

(Filed November 3, 1961. John P. Cowart, Clerk,
United States District Court.)

It appearing to the Court that the original papers and exhibits, comprising the entire record of the above-entitled case, should be sent to the United States Court of Appeals for the Fifth Circuit in lieu of copies,

It is therefore ORDERED pursuant to Rule 75(i), F.R. Civ. P., that the Clerk of this Court is to transmit, in physi-

cal form and without copying, to the Clerk of the United States Court of Appeals for the Fifth Circuit, the original papers and exhibits comprising the entire record in this case, and

It is further ORDERED that the original papers and exhibits shall be received by the Clerk of the Court of Appeals and held by him during the pending of the appeal herein for the use of the Court and counsel, and

It is further ORDERED that after the termination of the proceedings on appeal the Clerk of the Court of Appeals shall return the original papers and exhibits to the Clerk of this Court.

This 3 day of November, 1961.

/s/ W. A. Bootle,

United States District Judge.

Presented by:

/s/ Truett Smith,
Truett Smith,

Assistant United States Attorney.

Certificate of Service.

I hereby certify that a true and exact copy of the above and foregoing Order Transmitting Original Papers and Exhibits has been served on Jesse G. Bowles, Cuthbert, Georgia; Kelly, Champion & Henson, Columbus Bank and Trust Company Building, Columbus, Georgia; Frank D. Foley and Bentley H. Chappell, The Fourth National Bank Building, Columbus, Georgia, attorneys of record for A. J. Watson, former owner, by mailing the copy thereof to them at their respective addresses, as aforesaid.

This 3 day of November, 1961.

(s/ Truett Smith;
Truett Smith,

Assistant United States Attorney.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff

v.

**1,361.09 ACRES OF LAND, MORE
OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA,
AND CAROLYN GAVIN GIBSON,
ET AL., AND UNKNOWN OWN-
ERS,**

Defendants

CIVIL No. 792

COMPLAINT IN CONDEMNATION.

(Filed June 23, 1959. John P. Cowart, Clerk,
United States District Court.)

1.

This is an action of a civil nature brought by the United States of America at the request of the Secretary of the Army of the United States for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2.

The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supple-

mentary thereto and amendatory thereof, and under the further authority of the Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), which act authorizes the acquisition of land for river and harbor purposes; the Act of Congress approved July 24, 1946 (Public Law 525, 79th Congress), which act authorizes the construction of the Fort Gaines Lock and Dam, which said lock and dam, by Public Law 85-363, approved March 28, 1958, has been redesignated the Walter F. George Lock and Dam; and the Act of Congress approved September 2, 1958 (Public Law 85-863), which act appropriated funds for such purposes.

3.

The public uses for which said land is taken are as follows: The said land is necessary adequately to provide for the construction, repair and preservation of certain public works of rivers, harbors and waterways, and for other uses incident thereto. The said land has been selected by Wilber M. Brucker, Secretary of the Army of the United States for acquisition by the United States for use in connection with the establishment of the Walter F. George Lock and Dam Project, Georgia and Alabama, and for such other uses as may be authorized by Congress or by Executive Order.

4.

The interests in the property to be acquired are as follows:

- (a) The fee simple title to Tracts B-201 and B-240, together with all right, title or interest in and to the banks,

beds and waters of any streams opposite to or fronting upon said Tract B-201, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

(b) The perpetual right, power, privilege, and easement occasionally to overflow, flood, and submerge Tracts B-201-E-1, B-201-E-2, B-201-E-3, B-201-E-4, and B-240-E-1, and to maintain mosquito control, in connection with the operation and maintenance of the Walter F. George Lock and Dam Project as authorized by the Act of Congress approved July 24, 1946 (Public Law 525, 79th Congress), together with all right, title and interest in and to the structures and improvements now situated on the land; provided that no structures for human habitation shall be constructed or maintained on the land, and provided further that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project; reserving, however, to the landowners, their heirs, and assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

(c) A perpetual and assignable easement and right of way in, on, over and across Tracts B-201-E-5, B-201-E-6, B-201-E-7, and B-240-E-2, for the location, construction, operation, maintenance, replacement and/or removal of roads and highways and electric transmission lines and telephone lines and appurtenances thereto; together with

the right to trim, cut, fell and remove underbrush, obstructions, and other vegetation, structures, or obstacles within the limits of the right of way; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

(d) A perpetual and assignable easement and right of way to locate, construct, operate, maintain, and repair a roadway, in, upon, over and across Tract B-201-E-8, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right of way: subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs, executors, administrators, and assigns the right to use the surface of said land as access to their adjoining land.

(e) A perpetual and assignable easement and right of way in, over and across Tract B-240-E-3, to construct, maintain, repair, operate, patrol and replace a drainage ditch, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

5.

The property so to be taken is described in Schedule A hereto attached. The property which is the subject matter of this proceeding is located in Clay County, Georgia.

6.

The persons having or claiming an interest in the property, including taxing authorities, whose names are now known are:

AS TO ALL TRACTS

The Governor of Georgia	Atlanta, Georgia
The Secretary of State	Atlanta, Georgia
The Attorney General of Georgia	Atlanta, Georgia
State Highway Board	Atlanta, Georgia
County Commissioners of Clay County	Fort Gaines, Georgia
The Ordinary of Clay County, Ga., or the Clerk of the Superior Court of said county, if the Ordinary be disqualified, pursuant to Section 36-310 of the Code of Georgia of 1933	Fort Gaines, Georgia
Board of County Tax Assessors, Clay County, Georgia	Fort Gaines, Georgia
Tax Commissioners, Clay County, Georgia	Fort Gaines, Georgia

AS TO TRACTS B-201,

B-201-E-1, B-201-E-2,

B-201-E-3, B-201-E-4,

B-201-E-5, B-201-E-6,

B-201-E-7, B-201-E-8.

Carolyn Gavin Gibson	Fort Gaines, Georgia
Edward M. Gavin	1609 Standford Ave., N. E. Albuquerque, New Mexico
James F. Gavin	4133 Richmond Avenue Shreveport, Louisiana
Chester Gavin, Jr.	8468 Denton Street La Mesa, California

H. G. King

J. P. Calhoun

B. F. Johnston

L. M. Ray

John R. Bell

Willie Williams

Charlie James

Ralph Crozier

Fort Gaines, Georgia
c/o Calhoun Sand & Gravel
Co.

Lumpkin Road,
Columbus, Georgia
Aliceville, Alabama

Fort Gaines, Georgia

Route #2, Box 25
Fort Gaines, Georgia

Route #2, Box 214
Fort Gaines, Georgia

Route #2
Fort Gaines, Georgia

Route #2
Fort Gaines, Georgia

All the parties in possession of the lands herein sought to be condemned whose identities and addresses are unknown.

7.

In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken whose names are not known to the plaintiff and such persons are made parties to this action under the designation "Unknown Owners".

8.

It is necessary to have appointed a guardian ad litem to act for the allegedly incompetent, Mose Wallace.

Wherefore, the plaintiff prays (1) judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper, and (2) that an ap-

appropriate order of the Court be entered for the services of a guardian ad litem for Mose Wallace.

Frank O. Evans,

United States Attorney,

By /s/ Truett Smith,

Truett Smith,

Assistant United States Attorney.

Address:

P. O. Box 118,
Macon, Georgia.

DEMAND FOR JURY.

Trial by jury of the issue of just compensation is demanded by plaintiff this June 23, 1959.

/s/ Truett Smith,

Truett Smith,

Assistant United States
Attorney.

TRACT B-201

CAROLYN GAVIN GIBSON, ET AL.

.1331.37 ACRES

WALTER F. GEORGE LOCK AND DAM

SCHEDULE "A"

TRACT B-201

All that tract or parcel of land lying and being in Land Lots 268, 293, 294, 295, 306, 307, 334, 335, and Fractional Land Lots 343 and 372, Seventh Land District, Clay County, Georgia, being more, particularly described as follows:

Beginning at the Southeast corner of said Land Lot 306;

thence West along the South line of said Land Lots 306 and 335 and said Fractional Land Lot 343 a distance of 6750 feet, more or less, to the left bank of the Chattahoochee River;

thence Northwesterly upstream along the meanders of said left bank 5500 feet, more or less, to a corner of a tract of land now or formerly owned by Mrs. Frankie G. Chambers;

thence S 89° E along the boundary of said Chambers tract 5000 feet, more or less, to a corner of said Chambers tract;

thence N 69° E along the boundary of said Chambers tract 625 feet, more or less, to the East line of said Land Lot 343;

thence North along the East line of said Land Lots 343 and 344 a distance of 1610 feet, more or less, to the center of Georgia State Highway 39 and at a corner of a tract of land now or formerly owned by Walter Lee Peterson, et ux;

thence Southeasterly along the center line of said highway 750 feet, more or less, to a corner of said Peterson tract;

thence North along the boundary of said Peterson tract 550 feet, more or less, to a corner of said Peterson tract;

thence West along the boundary of said Peterson tract 250 feet, more or less, to a corner of a tract of land now or formerly owned by Lee Davis;

thence North along the boundary of said Davis tract 350 feet, more or less, to a corner of a tract of land now or formerly owned by Gus Holley;

thence East along the boundary of said Holley tract 200 feet, more or less, to a corner of said Holley tract;

thence North along the boundary of said Holley tract 250 feet, more or less, to a corner of said Holley tract;

thence West along the boundaries of said Holley tract and a tract of land now or formerly owned by Gussie Pitts 300 feet, more or less, to the center of a road and at a corner of said Pitts tract;

thence Southwesterly along the center line of said road which is along the boundary of said Pitts tract 100 feet, more or less, to a corner of said Pitts tract;

thence West along the boundary of said Pitts tract 150 feet, more or less, to the West line of said Land Lot 334;

thence North along the West line of said Land Lot 334 a distance of 450 feet, more or less, to a corner of a tract of land now or formerly owned by Everzetta Bray;

thence S 72° E along the boundary of said Bray tract 300 feet, more or less, to the center of a road which is along the boundary of said Bray tract;

thence Northerly along the center line of said road which is along the boundary of said Bray tract and a tract of land now or formerly owned by Susana Wade Wilson 910 feet, more or less, to the North line of said Land Lot 334;

thence East along the North line of said Land Lot 334 and said Land Lot 307 a distance of 5625 feet, more or less, to the Northeast corner of said Land Lot 307;

thence North along the West line of said Land Lot 293 a distance of 3025 feet, more or less, to the Northwest corner of said Land Lot 293;

thence East along the North line of said Land Lot 293 a distance of 2750 feet, more or less, to a point which is 350 feet, West of the Northeast corner of said Land Lot 293;

thence South along a line parallel to the East line of said Land Lot 293 a distance of 900 feet; * * *

thence N $62^{\circ} 05' 51''$ E 411.79 feet to a point which is in the center of Loci Foci Road and 700.06 feet S $01^{\circ} 08' 41''$ W from the Northwest corner of said Land Lot 268;

thence S $01^{\circ} 08' 41''$ W along the center line of said road 200.01 feet;

thence S $30^{\circ} 31' 08''$ W 704.85 feet to a point which is 1500 feet South of the North line and 350 feet East of the West line of said Land Lot 293;

• thence West along a line parallel to the North line of said Land Lot 293 a distance of 200 feet;

thence South along a line parallel to the East line of said Land Lot 293 a distance of 250 feet;

thence S 30° E 350 feet, more or less, to a point which is 300 feet West of the East line and 2000 feet South of the North line of said Land Lot 293;

thence South along a line parallel to the East line of said Land Lot 293 a distance of 350 feet;

thence S 30° W 300 feet, more or less, to a point which is 450 feet West of the East line and 450 feet North of the South line of said Land Lot 293;

thence West along a line parallel to the South line of said Land Lot 293 a distance of 450 feet;

thence S 30° W 500 feet, more or less, to a point which is on the South line of said Land Lot 293 a distance of 1150 feet West of the Southeast corner of said Land Lot 293;

thence West along the South line of said Land Lot 293 a distance of 950 feet, more or less, to the center of Sandy Creek;

thence Southwesterly downstream along the meanders of the center line of said creek 1500 feet, more or less, to the West line of said Land Lot 294;

thence South along the West line of said Land Lot 294 a distance of 600 feet, more or less, to the center of a creek;

thence Easterly upstream along the meanders of the center line of said creek 1000 feet, more or less, to the center of a branch;

thence Southeasterly upstream along the meanders of the center line of said branch 600 feet, more or less, to a point 1825 feet West of the East line of said Land Lot 294;

thence South along a line parallel to the East line of said Land Lot 294 a distance of 50 feet, more or less, to a point which is 650 feet North of the South line of said Land Lot 294;

thence West along a line parallel to the South line of said Land Lot 294 a distance of 575 feet, more or less, to a point 2400 feet West of the East line of said Land Lot 294;

thence South along a line parallel to the East line of said Land Lots 294 and 295 a distance of 3450 feet to a point 500 feet North of the South line of said Land Lot 295;

thence West along a line parallel to the South line of said Land Lot 295 a distance of 550 feet;

thence South along a line parallel to the East line of said Land Lot 295 a distance of 500 feet to the South line of said Land Lot 295;

thence West along the South line of said Land Lot 295 a distance of 150 feet, more or less, to the point of beginning.

LESS AND EXCEPT all that tract or parcel of land lying and being Land Lot 334, Seventh Land District, Clay County, Georgia, being more particularly described as follows:

Beginning at a point which is on the West line of said Land Lot 334 a distance of 1050 feet, more or less, South of the Northwest corner of said land lot and at the Northwest corner of the Key Cemetery;

thence East along the boundary of said cemetery 225 feet, more or less, to the center of a road which is along the boundary of said cemetery;

thence Southwesterly along the center line of said road which is along the boundary of said cemetery 225 feet, more or less, to a corner of said cemetery;

thence West along the boundary of said cemetery 150 feet, more or less, to the West line of said land lot which is the boundary of said cemetery;

thence North along the West line of said land lot which is the boundary of said cemetery 225 feet, more or less, to the point of beginning.

Containing 1.00 acre, more or less.

LESS AND EXCEPT a tract of land now or formerly owned by Anna Harris described as follows:

All that tract or parcel of land lying and being in Land Lot 334, Seventh Land District, Clay County, Georgia, being more particularly described as follows:

Beginning at a point which is 30 feet, more or less, South of the North line and 1525 feet, more or less, East of the West line of said Land Lot 334 and at a corner of a tract of land now or formerly owned by Anna Harris;

thence East along the boundary of said Harris tract 210 feet, more or less, to a corner of said Harris tract;

thence South along the boundary of said Harris tract 210 feet, more or less, to a corner of said Harris tract;

thence West along the boundary of said Harris tract 210 feet more or less, to a corner of said Harris tract;

thence North along the boundary of said Harris tract 210 feet, more or less, to the point of beginning.

Containing 1.00 acre, more or less, and being substantially the same land described in a deed from E. A. Greene to Anna Harris, dated 15 March 1937, and recorded

in Deed Book W, page 451, of the records in the Office of the Clerk of the Superior Court of Clay County, Georgia.

The land described hereinabove contains a net total of 1300.00 acres, more or less, and designated as Tract B-201 of the Walter F. George Lock and Dam.

TRACT B-201-E-1

All that portion of Land Lot 295, Seventh Land District, Clay County, Georgia, that lies below the contour at Elevation 196.8 feet above Mean Sea Level and within a portion of said land lot described as follows:

Beginning at a point which is on the South line of said Land Lot 295 a distance of 350 feet West of the Southeast corner of said land lot;

thence West along the South line of said land lot 700 feet;

thence N 30° E 1000 feet, more or less, to a point which is 900 feet North of the South line and 600 feet West of the East line of said land lot;

thence East along a line parallel to the South line of said land lot a distance of 250 feet;

thence South along a line parallel to the East line of said land lot a distance of 900 feet to the point of beginning.

Containing 2.30 acres, more or less, and designated as Tract B-201-E-1 of the Walter F. George Lock and Dam.

TRACT B-201-E-2

All that portion of Land Lot 295, Seventh Land District, Clay County, Georgia, that lies below the contour at

Elevation 196.8 feet above Mean Sea Level and within a portion of said land lot-described as follows:

Beginning at a point which is on the South line of said Land Lot 295 a distance of 1400 feet West of the Southeast corner of said land lot;

thence West along the South line of said land lot a distance of 950 feet;

thence North along a line parallel to the East line of said land lot a distance of 1150 feet;

thence East along a line parallel to the South line of said land lot a distance of 950 feet;

thence South along a line parallel to the East line of said land lot a distance of 1150 feet to the point of beginning.

Containing 10.79 acres, more or less, and designated as Tract B-201-E-2 of the Walter F. George Lock and Dam.

TRACT B-201-E-3

All that portion of Land Lot 293, Seventh Land District, Clay County, Georgia, that lies below the contour at Elevation 196.8 feet above Mean Sea Level and within a portion of said land lot-described as follows:

Beginning at a point which is on the South line at said Land Lot 293 a distance of 700 feet West of the Southeast corner of said land lot;

thence West along the South line of said land lot a distance of 450 feet;

thence N 30° E 500 feet, more or less, to a point which is 450 feet North of the South line and 900 feet West of the East line of said land lot;

thence East along a line parallel to the South line of said land lot a distance of 450 feet;

thence S 30° W 500 feet, more or less, to the point of beginning.

Containing 2.76 acres, more or less, and designated as Tract B-201-E-3 of the Walter F. George Lock and Dam.

TRACT B-201-E-4

All that portion of Land Lots 268 and 293, Seventh Land District, Clay County, Georgia, that lies below the contour at Elevation 196.8 feet above Mean Sea Level and within a portion of said land lot described as follows:

Beginning at a point which is on the North line at said Land Lot 293 a distance of 200 feet West of the Northeast corner of said Land Lot 293;

thence South along a line parallel to the East line of said Land Lot 293 a distance of 500 feet;

thence East along a line parallel to the North line of said Land Lot 293 and subsequently along a line parallel to the North line of said Land Lot 268 a distance of 207 feet, more or less, to the center of Loci Foci Road;

thence S 01° 08' 41" W along the center line of said road 200 feet, more or less, to a point which is 700.06 feet S 01° 08' 41" W from the Northwest corner of said Land Lot 268;

thence S $62^{\circ} 05' 51''$ W 411.79 feet to a point which is 350 feet West of the East line and 900 feet South of the North line of said Land Lot 293;

thence North along a line parallel to the East line of said Land Lot 293 a distance of 900 feet to the North line of said Land Lot 293;

thence East along the North line of said Land Lot 293 a distance of 150 feet to the point of beginning.

Containing 2.07 acres, more or less, and designated as Tract B-201-E-4 of the Walter F. George Lock and Dam.

TRACT B-201-E-5

All that tract or parcel of land lying and being in Land Lot 294, 295, 266 and 267, Seventh Land District, Clay County, Georgia, being a portion of the right-of-way for the proposed relocation of State Highway Number 39, being more particularly described as follows:

Beginning at a point which is at the Southeast corner of said Land Lot 295, in the center of Loci Foci Road and at Station 109+46.84 on the center line of said proposed relocation;

thence N $89^{\circ} 42' 15''$ W along the South line of said Land Lot 295 a distance of 50.00 feet;

thence N $01^{\circ} 08' 45''$ E 1500.88 feet;

thence Northerly along a curve to the right with a radius of 22,968.32 feet, an arc distance of 689.40 feet, the long chord of which bears N $02^{\circ} 00' 20''$ E 689.25 feet;

thence N $02^{\circ} 51' 56''$ E 1515.96 feet;

thence Northerly along a curve to the right with a radius of 11,509.16 feet, an arc distance of 239.00 feet, the long chord of which bears N 03° 22' 30" E 238.94 feet to the boundary of a tract of land now or formerly owned by Lenora Bryant;

thence S 86° 44' 00" E along the boundary of said Bryant tract 30 feet, more or less, to the center of said Loci Foci Road;

thence Southerly along the center line of said road 3944.0 feet, more or less, to the point of beginning.

Containing 4.60 acres, more or less, and designated as Tract B-201-E-5 of the Walter F. George Lock and Dam.

TRACT B-201-E-6

All that tract or parcel of land lying and being in Land Lots 268 and 293, Seventh Land District, Clay County, Georgia, being a portion of the right-of-way for the proposed relocation of State Highway 39 being more particularly described as follows:

Beginning at a point which is 900.07 feet S 01° 03' 41" W from the Northwest corner of said Land Lot 268 in the center of Loci Foci Road and at Station 192+68.34 on the center line of said proposed relocation;

thence S 30° 31' 08" W 101.93 feet;

thence S 01° 08' 41" W 478.05 feet;

thence Southerly along a curve to the left with a radius of 5779.58 feet, an arc distance of 924.26 feet, the long chord of which bears S 03° 26' 12" E 923.23 feet to the center of said Loci Foci Road;

thence Northerly along the center line of said road 1483.00 feet, more or less, to the point of beginning.

Containing 1.25 acres, more or less, and designated as Tract B-201-E-6 of the Walter F. George Lock and Dam.

TRACT B-201-E-7

All that tract or parcel of land lying and being in Land Lots 268 and 293, Seventh Land District, Clay County, Georgia, being a portion of the right-of-way for the proposed relocation of State Highway Number 39 being more particularly described as follows:

Beginning at the Northwest corner of said Land Lot 268 in the center of Loci Foci Road and at Station 201+68.41 on the center line of said proposed relocation;

thence S $01^{\circ} 08' 41''$ W along the center line of said road 700.06 feet;

thence S $62^{\circ} 05' 51''$ W 57.19 feet;

thence N $01^{\circ} 08' 41''$ E 728.25 feet to the North line of said Land Lot 293;

thence S $88^{\circ} 22' 19''$ E along the North line of said Land Lot 293 a distance of 50.00 feet to the point of beginning.

Containing 0.80 acres, more or less, and designated as Tract B-201-E-7 of the Walter F. George Lock and Dam.

TRACT B-201-E-8

All that tract or parcel of land lying and being in Land Lot 295, Seventh Land District, Clay County, Georgia, be-

ing a portion of the right-of-way for a proposed road, being more particularly described as follows:

Commencing at a point which is on the East line of said Land Lot 295 a distance of 728.49 feet South of the Northeast corner of said land lot;

thence N $87^{\circ} 07' 32''$ W 29.45 feet to the West right-of-way line of the proposed relocation of State Highway 39 and THE POINT OF BEGINNING;

thence S $02^{\circ} 51' 56''$ W along said West right-of-way of the proposed relocation of State Highway 39 a distance of 100.05 feet;

thence N $87^{\circ} 07' 32''$ W 130.66 feet;

thence Northwesterly along a curve to the right, with a radius of 766.20 feet, an arc distance of 454.67 feet, the long chord of which bears N $70^{\circ} 07' 26''$ W 448.02 feet;

thence N $53^{\circ} 07' 21''$ W 379.29 feet;

thence Westerly along a curve to the left with a radius of 904.93 feet, an arc distance of 781.01 feet, the long chord of which bears N $77^{\circ} 50' 53''$ W 756.98 feet;

thence S $77^{\circ} 25' 35''$ W 783.84 feet;

thence N $01^{\circ} 08' 45''$ E 102.94 feet;

thence N $77^{\circ} 25' 35''$ E 759.43 feet;

thence Easterly along a curve to the right with a radius of 1004.93 feet, an arc distance of 867.32 feet, the long chord of which bears S $77^{\circ} 50' 53''$ E 840.64 feet;

thence S $53^{\circ} 07' 21''$ E 379.29 feet;

thence Southeasterly along a curve to the left, with a radius of 666.20 feet, an arc distance of 395.33 feet, the long chord of which bears S 70° 07' 26" E 389.54 feet;

thence S 87° 07' 32" E 130.64 feet to the point of beginning.

Containing 5.80 acres, more or less, and designated as Tract B-201-E-8 of the Walter F. George Lock and Dam.

Tracts B-201, B-201-E-1, B-201-E-2, B-201-E-3, B-201-E-4, B-201-E-5, B-201-E-6, B-201-E-7 and B-201-E-8 contain in the aggregate 1331.37 acres, more or less, and being a part of the same land devised in the Will of Edward A. Greene to Edward N. Gavin, James F. Gavin, Chester Gavin, Jr., and Carolyn Gavin Gibson, dated 1 June 1958, and recorded in Will Book "B", page 171 of the records in the Office of the Ordinary of Clay County, Georgia.

* * *

REPORT OF COMMISSIONERS.

(Filed August 19, 1960. Walter F. Doyle, Deputy Clerk, United States District Court.)

To the Honorable W. A. Bootle, United States Judge for the Middle District of Georgia:

Pursuant to notice given to all parties concerned, the evidentiary hearing on condemnation of the above listed tracts was held in the United States Court Room in Columbus, Georgia, beginning at 10:00 o'clock, A. M., on June 14, 1960, and continuing through June 17, 1960.

It was stipulated by the parties that the owners of the several tracts, with each owning an undivided one-fourth

interest in each and all the tracts listed at the time of the taking by the United States, were Mrs. Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin and Chester Gavin, Jr.

Tract B201 is comprised of 1301 acres as shown by the maps and plats placed in evidence and in addition some 44 acres more or less situate between the west line of such tract along the east bank of the Chattahoochee River as shown on such maps and the west bank of the Chattahoochee River, the actual west property line of the Land Owners; Tract B201E1 is a perpetual flowage easement over 2.30 acres; Tract B201E2 is a perpetual flowage easement over 10.79 acres; Tract B201E3 is a perpetual flowage easement over 2.76 acres; Tract B201E4 is a perpetual flowage easement over 2.07 acres; Tract B201E5 is a perpetual road easement over 4.6 acres; Tract B201E6 is a perpetual road easement over 1.25 acres; Tract B201E7 is a perpetual road easement over 0.8 acres; Tract B201E8 is a perpetual road easement over 5.8 acres. The date of taking of the land by the Government was June 23, 1959.

At the conclusion of the evidence the parties waived oral argument, and it was agreed that the Commission would take the matter under advisement, with either party being entitled to file written briefs and argument, the Commission to render its decision as to the amount of just compensation at a later date.

The hearing was attended by Mr. Claude Joiner, Jr., official court reporter, and all of the testimony produced was taken down by him. A transcription of the proceedings will be available in the event desired.

In accordance with the prior order of this Court, the Commission makes the following summarization of evidence, findings of fact, conclusions of law, and award of just compensation.

Summarization of Evidence.

The Commission went upon and over the property on June 13, 1960. A representative from the Government was present and, together with Mrs. Carolyn Gavin Gibson, one of the owners, accompanied the Commission on the inspection. The improvements had been removed, and none of the property was in cultivation with annual row crops. However, the general topography and contour of the land, the character of the soil, lands theretofore devoted to row crops, and other characteristics of the land were noted by the Commission. The Commission has given consideration to charts, maps, photographs, etc., which were introduced into evidence by the parties.

(a) EVIDENCE FOR THE LAND OWNERS.

1. Joe B. Graham, engineer, estimated the acreage between the west line of the property as described in the declaration of taking and the west line of Land Owners' property coinciding with the Georgia-Alabama line on the west side of the Chattahoochee River as between 42 and 44 acres.

2. Dozier Torbert testified as to the sale of an allegedly comparable tract of 120 acres for \$11,000.00.

3. W. O. Sellers, county agent, testified of 12 years' acquaintanceship with the subject tract, and as to sale of an allegedly comparable tract of 135 to 160 acres for \$20,000.00.

4. Ben Moon, civil engineer, testified as to acreage of the subject tract, 435 acres between the highway and the river and 880 acres east of the highway.

5. Ralph Crozier, farmer, testified as to 10 years' familiarity with the subject tract, including 2 years of farming a portion of it. He testified that in his opinion the land west of the highway had a fair market value of \$100.00 per acre and that east of the highway, a fair market value of \$75.00 per acre. He further estimated the severance damage to the property remaining as the amount represented by a reduction in value of that 240 acres from \$75.00 per acre to \$45.00 per acre, or if that land be water sogged, to \$25.00 per acre.

6. L. M. Ray, farmer, testified that he had rented and farmed for 6 years a portion of subject tract between the highway and the river. He gave as his opinion that the fair market value of this property was \$90.00 per acre.

7. R. E. Phillips, lumber dealer, testified to 10 years' familiarity with the subject tract. He gave as his opinion a fair market valuation of \$100.00 per acre for that portion west of the highway and \$60.00 per acre for that portion east of the highway. He further testified that in his opinion the acreage remaining was depreciated by the taking in the amount of \$20.00 per acre. This witness also testified as to the sale of an allegedly comparable tract of 1432 acres for \$105,000.00, which included \$15,000.00 for timber. On cross-examination, he testified that grantor of this property had purchased it three months earlier for \$90,000.00. Witness further testified that he had cut timber off the subject tract in 1958.

8. Henry Hayes testified as to the cost of fencing as cost of wire at ten cents per foot, cost of corner posts and brace at \$3.50, posts at sixty-five cents, and labor at \$140.00 to \$150.00 per mile without clearance of right of way. He estimated cost of fencing property remaining at \$3,300.00 to \$3,500.00. On cross-examination, he testified that he was totally unfamiliar with the necessities of the terrain of the property remaining.

9. Hoke Lindsey testified that he had worked a portion of the subject tract lying west of the highway for three years. He gave as his opinion the fair market value of this land as \$100.00 per acre.

10. Jesse G. Bowles, attorney, testified as to the sales of two allegedly comparable tracts, one of 200 acres for \$16,250.00, and one 202 1/2 acres for \$15,150.00. He further testified as his opinion the fair market value of the subject tract to be \$100.00 per acre for land west of the highway and \$75.00 to \$80.00 per acre for land east of the highway.

11. Mrs. Carolyn Gavin Gibson, one of the Land Owners, testified as to income from the property from the Soil Bank and from rentals. She further testified as to Land Owners' claim of entitlement to \$127,919.58 made up of:

435 acres west of the highway at \$100 per acre	\$43,500.00
---	-------------

Lands east of the highway at \$85 per acre	76,646.20
--	-----------

Severance damage comprised of:

(1) 25% damage to acreage	4,773.38
and (2) cost of fencing	3,000.00

Total	<u>\$127,919.58,</u>
-------	----------------------

which total included allowance for easements except that no allowance was made for the road easements.

12. Robert L. Garrett, real estate appraiser and expert value witness, testified as to study and appraisal of subject tract, basing his valuation testimony mostly upon the comparative approach. He estimated the fair market value of the land west of the highway at \$83.00 per acre and that east of the highway at \$65.00 per acre. He testified as to

the value of the entire tract as	\$110,250.00
the value of remainder after taking as	10,720.00
and the amount of entitlement as	<u>\$ 99,530.00</u>

Witness further testified as to his opinion as to the fair market value of the properties involved as follows:

Value of property taken in fee	\$93,693.00
Value of easements 1, 2, 3, and 4	874.00
Value of easements 5, 6, and 7—no valuation	
Value of easement 8	377.00
Severance damage	4,586.00
Total	<u>\$93,530.00</u>

Witness further testified that he computed flowage easements at 75% of land value of \$65.00 per acre or \$48.75 per acre and severance damage on the basis of 10% of \$65.00 per acre plus fencing for the two larger remaining tracts and 1/3 of \$65.00 per acre plus fencing for the two smaller remaining tracts.

13. T. W. Mobley, banker and farmer, testified that he had been familiar with the subject tract since 1926. He placed in his opinion the value of the land west of the

highway at \$100.00 per acre and that east of the highway at \$70.00 per acre. He estimated the cost of needed fencing on the remaining property at \$4,492.60.

14. D. B. Perkins, farm supervisor, testified that he examined the subject tract and fixed as his opinion the value of the property west of the highway at \$100.00 per acre and that east of the highway at \$70.00 per acre. He estimated the cost of needed fencing on the remaining property at \$3,474.45.

(b) EVIDENCE FOR THE GOVERNMENT.

1. Ed J. Barter, project manager, identified and testified concerning Government exhibits 1, 2, 3, 4 and 6.

2. Hugh C. Couser, hydraulic engineer, identified and testified concerning Government exhibit 5.

3. Clayton Morris, forester, testified that he had valued the timber on the subject tract at \$578.00. He further testified that he had valued the timber on the tracts offered as comparables by Land Owners as of the respective dates of sale as follows:

Land Owners Comparable No. 1	\$725.00
Land Owners Comparable No. 2	1100.00
Land Owners Comparable No. 4	2220.00
Land Owners Comparable No. 5	1837.50

4. Thomas H. Cleveland, experienced in timber, testified as to valuation on timber located on Government offered comparables No. 3 and No. 5 as reflected by Government exhibit 9:

5. Harry C. Priddy, land appraiser and expert value witness for the Government, identified and testified con-

cerning Government exhibits 7, 8, and 9. He testified as to his study of the subject tract and extensive study of the record of real estate transactions in the vicinity. He testified as to the details of the several tracts, sales of which were offered as evidence by the Government as comparables. He placed in his opinion the fair market value of the property taken in fee of subject tract

as	\$56,100.00
and easements and severance damage at	3,200.00
for a total of	<hr/> \$59,300.00

(c) REBUTTAL EVIDENCE.

In rebuttal, Land Owners offered the testimony of W. C. Worthy to the effect that as to the Government offered comparable sale No. 6, there was less than \$1,000.00 timber value rather than around \$9,000.00 as contended by the Government through witness Priddy and Government exhibit 9. In behalf of the Government in rebuttal, Roy Burns testified that the books of W. C. Bradley Company reflect \$9,932.00 timber value on this tract as of the date of purchase. Thereupon, the evidence was closed on both sides.

Findings of Fact.

The Commission finds from the evidence as a whole the following:

1. Mrs. Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin, and Chester Gavin, Jr., according to the stipulation between the parties, were the owners of the several tracts herein described, each owning an undivided

one-fourth interest in each and all such tracts at the time of the taking by the United States on June 23, 1959.

2. The highest and best use to which these tracts could have been put at the time taken by the Government was that of farming, pasturage and timber growing.

3. The property remaining after the taking, instead of lying and being as theretofore in one large tract, is comprised of four smaller separated tracts of 144.09 acres, 59.4 acres, 17.58 acres, and 3.56 acres, respectively; and their use and value is impaired by the taking. The Commission finds that as a consequence the owners are entitled to severance damages in the amount of \$4,480.00.

4. The Commission finds that the fair market value of the fee in Tract B201, including the land lying between the banks of the river, was \$105,080.00 when it was taken by the United States on June 23, 1959.

5. The Commission finds that the fair market value of the easement over Tract B201E1 was \$80.00 when it was taken by the United States on June 23, 1959.

6. The Commission finds that the fair market value of the easement over Tract B201E2 was \$400.00 when it was taken by the United States on June 23, 1959.

7. The Commission finds that the fair market value of the easement over Tract B201E3 was \$120.00 when it was taken by the United States on June 23, 1959.

8. The Commission finds that the fair market value of the easement over Tract B201E4 was \$80.00 when it was taken by the United States on June 23, 1959.

9. The Commission finds that the fair market value of the easement over Tract B201E5 was \$None when it was taken by the United States on June 23, 1959.

10. The Commission finds that the fair market value of the easement over Tract B201E6 was \$None when it was taken by the United States on June 23, 1959.

11. The Commission finds that the fair market value of the easement over Tract B201E7 was \$None when it was taken by the United States on June 23, 1959.

12. The Commission finds that the fair market value of the easement over Tract B201E8 was \$None when it was taken by the United States on June 23, 1959.

13. Mrs. Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin, and Chester Gavin, Jr., are entitled to an award and judgment against the United States for the taking of the property in question in the amount of \$110,240.00, together with interest on that part of the amount so awarded which is in excess of the deposit made by the United States at the rate of 6% per annum in accordance with the law.

Conclusions of Law.

1. The United States had the right, in the exercise of its power of eminent domain, to take all of the property of Mrs. Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin, and Chester Gavin, Jr., involved in these proceedings.

2. The owners of these tracts of land are entitled to just compensation for the taking thereof, which compensation must represent the fair market value of all of the property taken as of the date it was taken by the United States.

3. The owners of these tracts of land are further entitled to severance damages as a part of just compensation.

4. The motion of the District Attorney to strike and exclude testimony concerning Land Owners' comparable No. 4 is denied and overruled.

5. The entire body of these several tracts of land involved in this proceeding is situated in Clay County, Georgia, within the Columbus Division of the United States District Court for the Middle District of Georgia; and, accordingly, the Commission, as constituted by the Court in its order entered in these proceedings on December 22, 1959, has jurisdiction for the purpose of determining the amount of just compensation to be paid by the United States for the taking of such land.

Wherefore, the undersigned Commissioners recommend to the Court, that Judgment be entered herein awarding just compensation to Mrs. Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin, and Chester Gavin, Jr., as the owners of the lands condemned in the amount and in the manner hereinabove specified.

Respectfully submitted this August 19, 1960.

/s/ Mallory C. Atkinson,
Mallory C. Atkinson, Chairman,

/s/ J. P. Champion,
J. P. Champion,

/s/ Hines Preston,
Hines Preston,
Commissioners.

Copies mailed by Judge Atkinson on 8/19/60.

/s/ John P. Cowart,
Clerk.

OBJECTIONS TO REPORT OF COMMISSIONERS.

(Filed August 29, 1960. Jennie L. Stricklin, Deputy Clerk, United States District Court.)

The United States of America, plaintiff in the above entitled cause, objects to the Report of Commissioners filed in this cause on August 19, 1960 on the following grounds:

1. The Report does not contain sufficient specific findings as to the matters on which the Commissioners based their valuation.
2. The Report does not sufficiently set forth the principles of law which the Commissioners applied in arriving at their conclusion as to value.
3. The award is excessive, outside the range of any proper testimony, against the weight of the evidence and clearly shows that the Commissioners disregarded recent sales of similar properties.
4. The award is outside the range of market value and therefore clearly erroneous.
5. The Commissioners erred in failing to exclude the testimony concerning landowners' comparable sale number 4 and it is impossible to determine to what extent, if any, this testimony entered into the Commissioners' valuation.

Wherefore, Plaintiff moves that the Court reject the Report and the findings and conclusions of the Commissioners and make an independent valuation of its own to conform with the clear weight of the evidence as to fair market value or in the alternative remand to the Commissioners for (1) a re-determination of the issue of just com-

compensation in the terms of fair market value with appropriate additional instructions as to the use of comparable sales, the weight to be accorded a view of the premises, the irrelevancy of consequential damages and as to the guide of the recent sales of similar properties when fair market value can be thus ascertained, and (2) proper findings as to the basic facts together with the principles of law which were applied in arriving at conclusion of value.

Respectfully submitted,

/s/ Truett Smith,

Truett Smith,

Assistant United States Attorney

Address:

P. O. Box 118,
Macon, Georgia.

Certificate of Mailing.

I, Truett Smith, Assistant United States Attorney, hereby certify that on this 26th day of August, 1960, I mailed a copy of the foregoing objections to the attorneys for the landowners, Mr. Forrest L. Champion, Jr., P. O. Box 196, Columbus, Georgia, and Mr. William Lowrey Stone, Blakely, Georgia, by depositing the same in the United States mail in a franked envelope addressed as above set out.

/s/ Truett Smith,

Truett Smith,

Assistant United States Attorney.

ORDER ADOPTING REPORT OF COMMISSIONERS.

(Filed February 17, 1961. Walter F. Doyle, Deputy Clerk, United States District Court.)

The Commissioners having filed their report fixing just compensation, condemnor having filed objections to said report, both sides having filed briefs in support or of in opposition thereto, and said report, objections and briefs having been carefully considered,

The said report of the Commissioners is hereby approved and adopted by the court.

Let counsel for condemnor prepare and submit an appropriate judgment.

SO ORDERED, this 16 day of February, 1961.

/s/ W. A. Bootle,

United States District Judge.

I certify that I have today mailed a copy of the within order to Mr. Truett Smith, Asst. U. S. Attorney, Macon Ga., Mr. W. Lowery Stone, Attorney at Law, Blakely, Ga., and Mr. Forrest L. Champion, Jr., Attorney at Law, Columbus, Ga. & Foley, Chappell, Young & Hollis, Columbus, Ga. This Feb. 17, 1961.

/s/ Walter F. Doyle,

Chief Deputy Clerk.

JUDGMENT.

(Filed April 25, 1961. Walter F. Doyle, Deputy Clerk,
United States District Court.)

That an order heretofore entered adopted and confirmed the Commissioners' Report on Tracts Nos. B-201, B-201-E-1, B-201-E-2, B-201-E-3, B-201-E-4, B-201-E-5, B-201-E-6, B-201-E-7 and B-201-E-8 finding the just compensation for the taking of the property being acquired herein as Tracts Nos. B-201, B-201-E-1, B-201-E-2, B-201-E-3, B-201-E-4, B-201-E-5, B-201-E-6, B-201-E-7 and B-201-E-8 to have been the sum of \$110,240.00 at the time of the taking thereof by the United States of America, IT IS ADJUDGED, ORDERED AND DECREED that Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin and Chester Gavin, Jr., do have and recover of and from the United States of America the amount of just compensation of \$110,240.00.

It appearing to the Court:

That from a Certificate of the Tax Collector of Clay County, Georgia, exhibited to the Court by the United States Attorney, that there are no taxes due on these tracts, and

That the United States of America has the right to condemn the subject property interest for public use, and

That the estate or interest condemned and the legal description of the subject property are both defined by the Petition in Condemnation and the Declaration of Taking filed herein, and title to said estate or interest in said subject property is vested in the United States, and

That the United States of America deposited in the Registry of this Court on June 23, 1959, at the time of filing its Declaration of Taking in this proceeding, the sum of \$61,650.00, as the estimated compensation for said property interests, and that the difference between the amount of the deposit of estimated compensation, as aforesaid; and the value of said property interests, as aforesaid, is the sum of \$48,590.00, and

That an order heretofore entered found that the United States of America was entitled to a reasonable rental of \$580.00 arising under a claim for reasonable rental filed against Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin and Chester Gavin, Jr., on February 10, 1961.

Therefore, IT IS ORDERED:

That judgment be, and the same hereby is, rendered against the United States of America and in favor of Carolyn Gavin Gibson, Edward M. Gavin, James F. Gavin and Chester Gavin, Jr., in the sum of \$48,010.00 (representing the difference between \$48,590.00 and \$580.00), together with interest on \$48,590.00 from June 23, 1959, until February 10, 1961 (representing the date the United States of America filed its claim for reasonable rental) at the rate of six percent per annum, also together with interest on \$48,010.00 at the rate of six percent per annum from February 10, 1961, until payment into the Registry of this Court.

This cause is held open for such further orders, judgments and decrees as may be necessary in the premises.

This 24 day of April, 1961.

/s/ W. A. Bootle,
United States District Judge.

Presented by:

/s/ Truett Smith,
Truett Smith,
Assistant United States Attorney.

NOTICE OF APPEAL.

(Filed June 22, 1961. H. Okay Parker, Deputy Clerk,
United States District Court.)

Comes now Floyd M. Buford, United States Attorney,
and Truett Smith, Assistant United States Attorney, coun-
sel for appellant, the United States of America, and hereby
gives notice of appeal to the United States Court of Appeals
for the Fifth Circuit from the final judgment entered in
this cause on April 25, 1961.

Floyd M. Buford,
United States Attorney

B: /s/ Truett Smith,
Truett Smith,
Assistant United States Attorney.

Address:

P. O. Box 118
Macon, Georgia

Certificate of Service.

I hereby certify that a true and exact copy of the above
and foregoing Notice of Appeal has been served on W. L.
Stone, Blakely, Georgia; Kelly, Champion & Henson,

Columbus Bank and Trust Company Building, Columbus, Georgia; Frank D. Foley and Bentley H. Chappell, The Fourth National Bank Building, Columbus, Georgia, attorneys of record for Carolyn Gavin Gibson, Edwin M. Gavin, James F. Gavin and Chester Gavin, Jr., former owners, by mailing the copy thereof to them at their respective addresses, as aforesaid.

This 21st day of June, 1961.

/s/ Truett Smith,
Truett Smith,

Assistant United States Attorney

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Nos. 19344, 19345

UNITED STATES OF AMERICA, Appellant

v.

**2,872.88 ACRES IN CLAY AND QUITMAN COUNTIES,
GEORGIA, AND FRANK HUMBER ET AL. (TRACTS
H-805, H-805-E-1 through H-805-E-4, M-1306 and M-1306-E)
UNITED STATES OF AMERICA, Appellant**

v.

**1,361.09 ACRES IN CLAY COUNTY, GEORGIA,
AND CAROLYN GAVIN GIBSON ET AL.
(TRACTS B-201, B-201-E-1 through B-201-E-8)**

**DESIGNATION OF RECORD FOR PRINTING AND
STATEMENT OF POINTS ON APPEAL.**

The United States of America, appellant herein, designates the following portions of the records in these cases to be printed:

From the Record of Civil No. 789.

1. Complaint in Condemnation, excluding those portions of paragraph 6 and of Schedule A pertaining to tracts other than the H-805 and M-1306 series.

2. Order Appointing Commissioners.

3. Instructions to Commissioners.

4. Amendment to Orders Appointing Commissioners.

5. Order on Pre-Trial Hearing Before Commissioners.

6. Report of Commissioners on H-805 series.

7. Report of Commissioners on M-1306 and M-1306-E.

8. Objections to Report of Commissioners on H-805 series.

9. Objections to Reports of Commissioners on M-1306 and M-1306-E.

10. Order of Court Adopting Report of Commissioners on H-805 series.

11. Order of Court Adopting Report of Commissioners on M-1306 and M-1306-E.

12. Judgment on Order Adopting Report of Commissioners on H-805 series.

13. Judgment on Order Adopting Report of Commissioners on M-1306 and M-1306-E.

14. Notice of Appeal on H-805 series.

15. Notice of Appeal on M-1306 and M-1306-E.

From the Record of Civil No. 792.

1. Complaint in condemnation, excluding those portions of paragraph 6 and of Schedule A pertaining to tracts other than the B-201 series.
2. Report of Commissioners on B-201 series.
3. Objections to Report of Commissioners on B-201 series.
4. Order of Court Adopting Report of Commissioners on B-201 series.
5. Judgment on Order Adopting Report on B-201 series.
6. Notice of Appeal on B-201 series.
7. This Designation of Record for Printing and Statement of Points on Appeal.

The United States, not having designated the entire record for printing, states that the following are the points on which it intends to rely on appeal:

1. The district court erred in failing and refusing to order the commissioners to make complete findings of fact and conclusions of law.
2. The district court erred in approving and adopting the reports of the commissioners when the findings were inadequate to determine the basis on which the awards were made.
3. The district court erred in adopting and approving the reports when the reports themselves show that there were conflicts in the evidence but do not show how the commissioners resolved them in making the awards.

4. The district court erred in entering judgment for just compensation on the basis of these inadequate reports.

Dated the 24th day of November, 1961.

/s/ Ramsey Clark,
 Ramsey Clark,
 Assistant Attorney General,
 /s/ S. Billingsley Hill,
 S. Billingsley Hill,
 /s/ Hugh Nugent,
 Hugh Nugent,
 Attorneys, Department of
 Justice, Washington 25,
 D. C.

Certificate of Service.

I certify that the foregoing Designation of Record for Printing and Statement of Points on Appeal has been served upon the appellees by mailing copies thereof, postage prepaid, to Jesse G. Bowles, Cuthbert, Georgia; Kelly, Champion & Henson, P. O. Box 1975, Columbus, Georgia; Frank D. Foley and Bentley H. Chappell, Fourth National Bank Building, Columbus, Georgia; and W. L. Stone, Blakely, Georgia, attorneys of record for the condemnees, on this 24th day of November, 1961.

/s/ S. Billingsley Hill,
 S. Billingsley Hill.

**ORDER TRANSMITTING ORIGINAL PAPERS AND
EXHIBITS.**

(Filed November 3, 1961. John P. Cowart, Clerk,
United States District Court.

It appearing to the Court that the original papers and exhibits, comprising the entire record of the above-entitled case, should be sent to the United States Court of Appeals for the Fifth Circuit in lieu of copies,

It is therefore ORDERED pursuant to Rule 75(i), F.R.Civ.P., that the Clerk of this Court is to transmit, in physical form and without copying, to the Clerk of the United States Court of Appeals for the Fifth Circuit, the original papers and exhibits comprising the entire record in this case, and

It is further ORDERED that the original papers and exhibits shall be received by the Clerk of the Court of Appeals and held by him during the pending of the appeal herein for the use of the Court and counsel, and

It is further ORDERED that after the termination of the proceedings on appeal the Clerk of the Court of Appeals shall return the original papers and exhibits to the Clerk of this Court.

This 3rd day of November, 1961.

/s/ W. A. Bootle,

United States District Judge.

Presented by:

/s/ Truett Smith
Truett Smith,

Assistant United States Attorney.

Certificate of Service.

I hereby certify that a true and exact copy of the above and foregoing Order Transmitting Original Papers and Exhibits has been served on W. L. Stone, Blakely, Georgia; Kelly, Champion & Henson, Columbus Bank and Trust Company Building, Columbus, Georgia; Frank D. Foley and Bentley H. Chappell, The Fourth National Bank Building, Columbus, Georgia, attorneys of record for Carolyn Gavin Gibson, Edwin M. Gavin, James F. Gavin and Chester Gavin, Jr., former owners, by mailing the copy thereof to them at their respective addresses, as aforesaid.

This 3rd day of November, 1961.

/s/ Truett Smith,
Truett Smith,

Assistant United States At-
torney.

[fol. 112]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[fol. 113] Minute entry of Argument and Submission—
October 17, 1962 (omitted in printing).

[fol. 114]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19344

UNITED STATES OF AMERICA, Appellant,
versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES, STATE OF GEORGIA, and FRANK
HUMBER, ET AL., and UNKNOWN OWNERS, Appellees,
and

No. 19345

UNITED STATES OF AMERICA, Appellant,
versus

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA, and CAROLYN GAVIN GIBSON,
ET AL., and UNKNOWN OTHERS, Appellees.

[fol. 115] Appeals from the United States District Court
for the Middle District of Georgia.

OPINION—December 5, 1962

Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and
Johnson, District Judge.

Tuttle, Chief Judge: These appeals by the United States from District Court judgments approving valuation awards of condemnation commissioners present the question whether the reports of the commissioners were sufficiently detailed as to findings of fact, and in giving the basis on which they were bottomed to permit adequate review by the district court, and thereafter by this Court.

These condemnation suits are a part of a program of land acquisition for the Walter F. George Lock and Dam project on the Chattahoochee River in Georgia and Alabama. The three series of tracts involved are all tracts of ordinary farm, timber and pasture land. While the government requested a jury trial, it does not now contend that the submission of the issues to commissioners by the trial court constituted reversible error. Neither does the government, on the record before us, assign any specific error in the hearings before the commissioners as a basis for attacking the judgment of the district court in affirming the report of the commissioners. Instead, the government takes the position that the reports of the commissioners are in such general and vague terms as to make it impossible for the district court or for this Court on appeal to determine [fol. 116] whether the commissioners' ultimate conclusions of value were based on legally correct principles or on legally sufficient evidence.

The appellees here, first, claim that the Court of Appeals cannot take notice of the government's appeal, because it does not expressly contend that the awards are excessive. They take the position, therefore, that any claim by the government that there was error in the form or substance of the commissioners' reports falls within the "harmless error" rule of the Federal Rules of Civil Procedure, Rule 61 F.R.C.P. We think this contention is without merit. It is apparent from the findings of the commissioners that the awards made by them and approved by the trial court are substantially in excess of the amounts deposited in court upon the declaration of taking. It thus appears that if errors occurred in the proceedings below, as a result of which judgments were awarded in excess of the amounts contended for by the United States, such errors would not be harmless in the sense of the Rule.

In general, the report of the commissioners recited the substance of the valuation testimony given by the several witnesses tendered by the landowners, on the one hand, and by the government on the other, and they made ultimate findings of the market value of the property taken and of severance damages to lands not taken and make certain specific findings as to the value of easements and fences taken, or the cost of fencing the remaining tracts. The reports did not in any manner whatever indicate which evidence the commission credited and which evidence it discredited. The reports gave no indication as to the degree to which it based its findings upon those opinions that were [fol. 117] based on knowledge of comparable sales, nor did they give any indication as to whether indicated sales were truly comparable. The reports did not indicate to what extent it gave credence to the opinions of witnesses who, according to the summary of evidence given in the reports themselves, had little or no familiarity with the ordinary ingredients that are generally considered by the courts to be required to support an opinion of value in a condemnation case.

Part of the basis for this Court's repeatedly stating that the trial of condemnation valuation issues is typically for a jury, and the appointment of commissioners is proper only in the exceptional case, *United States v. Buhler*, 5 Cir., 254 F. 2d 876, *United States v. Leavell & Ponder, Inc.*, 286 F. 2d 398, 408, *United States v. Buhler*, 5 Cir., 305 F. 2d 319, 331, is that where a trial is had before a jury, the trial judge is charged with the responsibility of determining the qualifications of so-called expert witnesses and of others who undertake to express opinions as to land values and to determine initially whether so-called "comparable sales," about which witnesses propose to testify, are sufficiently comparable to justify their consideration by the fact-finder, and because, further, the trial judge is able, by correctly charging the jury, to point out the defects and weaknesses in the testimony of interested parties to the proceedings, such as the owners of the land involved, and to stress the importance, as courts have always done, *Baetjer v. United States*, 1 Cir., 143 F. 2d 391, 397; *International Paper Co. v. United States*, 5 Cir., 227 F. 2d 201, 208; *United States v.*

Leavell & Ponder, Inc., 5 Cir., 286 F. 2d 398, 407, cert. denied 366 U. S. 944, of opinion evidence based on comparable transactions. In a trial to a jury under such supervision by a trial judge, it can well be understood why a general verdict [fol. 118] dict of value, plus a general verdict of severance damages can suffice, whereas a hearing before a commission must result in findings much more detailed than a general verdict.

The Courts of Appeals of the several circuits are not of a uniform mind as to this; but we find ourselves fully in accord with the reasoning of the Court of Appeals for the Fourth Circuit in *United States v. Cunningham*, 4 Cir., 246 F. 2d 330, 333, where it is said:

"The very reasons which justify the appointment of the commission, however, demonstrates the inadequacy of the commission's report. The justification of the appointment is the variety and complexity of the matters to be considered on the question of valuation and the importance of having these adequately set forth in a report so that they may be subjected to the scrutiny of the District Court and of this court upon review and the proper principles of valuation applied to them. Any adequate review of the facts or of the legal principles followed in basing valuations on the facts is defeated if a report by the commission is of such a character that it amounts to no more than a general verdict by a jury. The verdict of a jury of twelve men may reasonably be dispensed with if commissioners make a report which furnishes an adequate basis of review by the trial judge and the appellate court, but not if the report furnishes no such basis. Just as a judge in a trial without a jury is required to make adequate findings so that his conclusions may be reviewed by the appellate court so a master, in an [fol. 119] action to be tried without a jury, is required to make findings of fact so that his conclusions may be adequately reviewed by the trial judge, who is required to accept them 'unless clearly erroneous' (Rule 53(e) (2)), and this practice with respect to the report of a master is prescribed by Rule 71A(h) with respect to reports of commissioners in condemnation proceedings."

This Court has expressly approved this language of the Fourth Circuit in *United States v. 2,477.79 Acres of Land in Bell County*, 5 Cir., 259 F. 2d 23, where on page 29, we said:

"We find ourselves in agreement with the Government's position that the findings of the commissioners are wholly inadequate and that the judgment must be vacated and the cause remanded for proper findings and a judgment based thereon. From the report, so styled, of the commissioners nothing appears except a recital of their appointment, a statement that a hearing was had, and the commissioners' conclusions as to values. As examples of the deficiencies in the findings it may be noted that *nothing is found as to how the commissioners resolved the conflicts in the testimony*, no findings appear as to the uses of the land particularly Tract 805, and no determination is made as to benefits. Without explicit findings the trial court cannot adopt or reject the findings or adopt some and reject others. Without adequate findings this Court does not have before it a record which permits of a review of the district court's adjudication. *United States v. Buhler*, supra; *United States v. Cunningham*, [fol. 120] 4 Cir., 1957, 246 F. 2d 330. [Emphasis added.]"

We recognize that the view we take of this matter is at variance with that of the Court of Appeals for the Tenth Circuit as expressed in the decision of that Court in *United States v. Merz*, 10 Cir., 306 F. 2d 39. Our view in this respect is in accord with that of the Court of Appeals for the Ninth Circuit, which has recently reversed judgment of a trial court in California which expressly stated that in a condemnation case, the Commission's finding "may be as general as the verdict of a jury, and have the same effect." In its judgment reversing this decision the Court of Appeals in *United States v. Lewis*, 9 Cir., No. 17,437, dec. July 10, — F. 2d —, said:

"Upon this basic difference we agree with the principles expressed in *Cunningham*. The district judge is not sitting as the presiding judge in a jury-tried

case, but as a reviewing court. He has not heard the evidence nor supervised its admission and thus is in no position to view the commission's report simply as a jury verdict. If the court is intelligently to perform a function of review, it must be able to ascertain whether, in arriving at its value judgment, error was committed by the commission, either in the resolution of factual disputes or in the application of principles of valuation. There must be a sufficient disclosure to the reviewing court to enable it to understand what it is that has been decided. As stated by Mr. Justice Cardozo in *United States v. Chicago M. St. P. & P. Railroad*, 1935, 294 U. S. 499, 510-511:

[fol. 121] "We must know what a decision means before the duty becomes ours to say whether it is right or wrong."

Although admittedly the scope of review, either by the trial court of the commissioners' findings of valuation or by this Court on the trial court's judgment, is restricted in the sense that a reversal is to be had only if the order under review is clearly erroneous, this function cannot be adequately performed by the reviewing court unless the fact finder makes it plain what the basis of its decision was. We do not say that every contested issue raised on the record before the commission must be resolved by a separate finding of fact. We do say, however, that there must be sufficient findings of subsidiary facts so that it will appear to the reviewing court that the ultimate finding of value was soundly and legally based. It is too obvious to require argument that in determining market value the best test is what the same or similar property is selling for in the locality at or near the day of taking. Thus, it is universally recognized that the best test of market value is the data concerning comparable sales. On the record before us, the commission speaks of comparable sales, but there is no finding or expression of opinion as to whether the sales sustain a value of \$100 per acre, for instance, in the case of one of the tracts, as found by the commission, or whether this value represents merely a scaling down by the commission of an expression of an opinion by others

whose opinion of value may have been based on some such theory as that expressed by one of the witnesses, who said:

"I arrived at it like I'd price mine, just like it is; [fol. 122] that's what it would take to buy mine adjoining Hoke's."

If this is all that the record shows as to this neighbor's qualifications to express an opinion of value of the land, then such opinion would obviously have no probative value.

This Court has held that in an appeal from a judgment of the trial court where the valuation finding has been made by commissioners, it is the function of the trial court to determine whether the commission's findings are to be approved or are to be reversed under the clearly erroneous standard. *United States v. Twin City Power Company of Georgia*, 5 Cir., 253 F. 2d 197, 204. It is then the function of this Court to determine whether the district court's disposition of the commission's findings was clearly erroneous.

In order that the district court may perform its function, it must be able to determine whether the commission adopted the correct legal principles, and whether the evidence before the commission met the standard of substantiality to withstand a reversal by the district court. As we said in *United States v. Leavell & Ponder, Inc.*, 5 Cir., 286 F. 2d 398, at page 406, "The figure arrived at by the commissioners would much better have been supported by subsidiary findings of fact. . . . Without adequate subsidiary findings it is impossible for this Court to test the correctness of the elements of which it is the product or the sum."

Furthermore, while we do not even suggest the need for long findings or long reports merely for the sake of length, [fol. 123] there is much to be said for the view that commissioners like trial judges may be expected to give more careful consideration to the subsidiary facts and the legal principles involved if they are required to be stated in the report. The language of the opinion of the Court of Appeals for the Second Circuit, in *United States v. Forness*, 2 Cir., 125 F. 2d 928, at page 942 is here apposite:

"It is sometimes said that the requirement that the trial judge file findings of fact is for the convenience

of the upper courts. While it does serve that end, it has a far more important purpose—that of evoking care on the part of the trial judge in ascertaining the facts. For, as every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness in the discharge of that duty. Often a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper."

In order that the commissioners' reports may meet the standards here prescribed, the judgments are Reversed and the cases are Remanded to the trial court for re-submission.

[fol. 124]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
October Term, 1962.

No. 19,344

D. C. Docket No. 789 Civil

UNITED STATES OF AMERICA, Appellant,
versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES, STATE OF GEORGIA, and FRANK
HUMBER, ET AL., and UNKNOWN OWNERS, Appellees.

Appeals from the United States District Court for the
Middle District of Georgia.

Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and
Johnson, District Judge.

JUDGMENT—December 5, 1962

This cause came on to be heard on the transcript of the
record from the United States District Court for the
Middle District of Georgia, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for resubmission in order that the commissioners' reports may meet the standards prescribed in the opinion of this Court.

[fol. 125]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,345

D. C. Docket No. 792 Civil

UNITED STATES OF AMERICA, Appellant,
versus

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA, and CAROLYN GAVIN GIBSON,
ET AL., and UNKNOWN OTHERS, Appellees.

Appeal from the United States District Court for the
Middle District of Georgia.

Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and
Johnson, District Judge.

JUDGMENT—December 5, 1962

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for resubmission in order that

the commissioners' reports may meet the standards prescribed in the opinion of this Court.

[fol. 126] Petition for rehearing covering 9 pages filed December 20, 1962 omitted from this print. It was denied, and nothing more by order January 3, 1963.

[fol. 135]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19,344

UNITED STATES OF AMERICA, Appellant,

v.

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY
AND QUITMAN COUNTIES, STATE OF GEORGIA, and FRANK
HUMBER, ET AL., and UNKNOWN OWNERS, Appellees,

AND

No. 19,345

UNITED STATES OF AMERICA, Appellant,

v.

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY
COUNTY, STATE OF GEORGIA, and CAROLYN GAVIN GIBSON,
ET AL., and UNKNOWN OTHERS, Appellees.

Appeals from the United States District Court for the
Middle District of Georgia.

ORDER DENYING PETITION FOR REHEARING—January 3, 1963

Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and
Johnson, District Judge.

Per Curiam:—

It is Ordered that the petition for rehearing filed in the above stated and numbered cases be, and the same is, hereby Denied.

[fol. 136] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 137]

SUPREME COURT OF THE UNITED STATES

No. 850, October Term, 1962

2,872.88 ACRES OF LAND, etc., et al.; Petitioners,

vs.

UNITED STATES

ORDER ALLOWING CERTIORARI—April 22, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.